

England's  
True Interest  
CONSIDERED,  
WITH  
HONOUR  
TO THE  
PRINCE,  
AND  
Safety to the People.

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The fifth Edition.

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*Lex est Ratio sine Appetitu.*

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LONDON Printed, and Sold by  
E. Baldwin, at the Oxford-Arms in  
Warwick-Lane, 1702.

England's

The Interest

CONSIDERED

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Safety to the People

The British Museum

Printed by the Trustees

LONDON Printed, and sold by  
E. B. at the Oxford-arm in  
Warwick-Lane, 1707.



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THE

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# The QUESTION.

**W**HAT is most Fit,  
*Easie and Safe,* at  
 this Juncture of Affairs, to be  
 done, for Composing, at least  
 Quieting Differences; for Al-  
 laying the Heat of Contrary  
 Interests, and making them  
 Subservient to the Interest of  
 the Government, and Consis-  
 tent with the Prosperity of the  
 Kingdom?

# The *A N S W E R*.

- I. An Inviolable and Impartial Maintenance of English Rights.
- II. Our Superiours Governing themselves upon a Ballance, as near as may be, towards the several Religious Interests.
- III. A sincere Promotion of General and Practical Religion.

I shall briefly Discourse upon these Three Things, and endeavour to prove them a *sufficient*, if not the *only best*, Answer that can be given to the Question propounded.

Of

## Of English Rights.

**T**Here is no Government in the World, but it must either stand upon *Will and Power*, or *Condition and Contract*: The one Rules by *Men*, the other by *Laws*. And above all Kingdoms under Heaven, it is *England's* Felicity to have her Constitution so impartially Just and Free, as there cannot well be any thing more remote from Arbitrariness, and Zealous of preserving the Laws, by which its Rights are maintained.

These Laws are either *Fundamental*, and so Immutable; or more *Superficial* and *Temporary*, and consequently Alterable.

By *Superficial Laws* we understand such Acts, Laws or Statutes, as are suited to present Occurrences, and Emergencies of State;



and which may as well be Abrogated, as they were first made, for the Good of the Kingdom: For Instance, Those Statutes that relate to Victuals, Cloaths, Times and Places of Trade, &c. which have ever stood, whilst the Reason of them was in Force; but when that Benefit, which did once redound, fell by fresh Accidents, they ended according to that old Maxim, *Cessante ratione legis, cessat lex.*

By *Fundamental Laws* I do not only understand such as immediately spring from **Synteresis** ( that Eternal Principle of Truth and Sapience ) more or less disseminated through Mankind, which are as the Corner-Stones of Humane Structure, the Basis of reasonable Societies, without which all would run into Heaps and Confusion; to wit, *Honeste vivere, Alterum non lædere,*  
*jus*



*jus suum cuiq; tribuere*; that is, To live Honestly, not to Hurt another, and to give every one their Right (Excellent Principles, and common to all Nations) though that it self were sufficient to our present purpose: But those *Rights* and *Privileges*, which I call *English*, and which are the proper *Birth-right* of *English* Men, and may be reduced to these Three.

I. An Ownership, and Undisturbed Possession: That what they have, is rightly theirs, and no Body's else.

II. A Votung of every Law, that is made, whereby that Ownership or Propriety may be maintained.

III. An Influence upon, and a real Share in that Judicatory Power that must apply every such Law, which is the Ancient Necessary and Laudable

**Use of Juries**: If not found among the **Britain's**, to be sure **Practised** by the **Saxons**, and **Continued** through the **Normans** to this very day.

That these have been the Ancient and Undoubted Rights of *English* Men, as Three great Roots, under whose Spacious Branches the English People have been wont to shelter themselves against the Storms of Arbitrary Government, I shall endeavour to prove.

## I. An Ownership and Undisturbed Possession.

This Relates both to Title and Security of *Estate*, and Liberty of *Person*, from the Violence of Arbitrary Power.

'Tis

'Tis true, the Foot-Steps of the *Brittish* Government are very much over-grown by Time. There is scarcely any thing remarkable left us, but what we are beholden to Strangers for : Either their own Unskilfulness in Letters, or their Depopulations and Conquests by Invaders, have deprived the World of a particular Story of their Laws and Customs, in Peace or War. However, *Cesar*, *Tacitus*, and especially *Dion*, say enough to prove their Nature and their Government to be as far from Slavish, as their Breeding and Manners were remote from the Education and greater Skill of the *Romans*. *Beda* & *M. Westminster* say as much.

The Law of *Property* they observed, and made those Laws that concern'd the Preservation of it.

The *Saxons* brought no Alteration to these two Fundamentals of

our *English* Government; for they were a *Free* People, govern'd by Laws, of which They themselves were the Makers: That is, There was no Law made without the Consent of the People, *de majoribus omnes*, as *Tacitus* observeth of the *Germans* in general. They lost nothing by Transporting of themselves hither; and doubtless found a greater Consistency between their Laws, than their Ambition. For the Learned Collector of the *Brittish Councils* tells us, That **Ethelston**, the *Saxon* King, pleading with the People, told them, *Seeing I, according to your Law, allow what is yours, do ye so with me*. Whence Three Things are observable. First, That something was *Theirs*, that no Body else could dispose of. Secondly, That they have *Property* by their own Law, therefore they had a *Share* in making their own Laws.

Laws. Thirdly, That the Law was *Umpier* between King and People; neither of them ought to infringe: The Law limited them. This, *Ina*, the Great Saxon King, confirms: *There is no Great Man, saith he, nor any other in the whole Kingdom, that may abolish Written Laws.* It was also a great part of the Saxon Oath, administered to the Kings, at their Entrance upon the Government, *to Maintain and Rule according to the Laws of the Nation.*

Their Parliament they called *Wicklemote*, or *Wittangemote*. It consisted of King, Lords & People, before the Clergy interwove themselves with the Civil Government. And *Andrew Horn*, in his *Mirror of Justice*, tells us, *That the Grana Assembly of the Kingdom in the Saxon time, was to confer of the Government of God's People, how they might*



*be kept from Sin, in Quiet, and have Right done them, according to the Customs and Laws.*

Nor did this Law end with the *Saxon Race*: **William** the Conqueror, as he is usually called, quitting all claim by *Conquest*, gladly stooped to the Laws observed by the *Saxon Kings*, and so became a King by Leave; valuing a Title by *Election* before that which is founded in *Power* only. He therefore, at his Coronation, made a Solemn Covenant to maintain the Good, Approved, and Ancient Laws of this Kingdom, and to Inhibit all Spoil and Unjust Judgment.

And this, **Henry** the First, his Third Son, among other his Titles, mentioned in his Charter, to make *Ely* a Bishoprick, calls himself, *Son of William the Great*, who, by Hereditary Right (not Conquest) succeeded King *Edward* (called

led *the Confessor*) in this Kingdom.

An Ancient Chronicle of *Liechfield*, speaks of a Council of Lords that advised *William of Normandy*, To call together all the Nobles and Wise Men throughout their Counties of England, that they might set down their own Laws and Customs; which was about the Fourth Year of his Reign: Which implies that they had Fundamental Laws, and that he intended their Confirmation.

And one of the first Laws made by this King, which, as a notable Author saith, may be called the **First Magna Charta** in the *Norman* Times (by which he reserved to himself nothing of the Free-men of this Kingdom, but their Free-service) in the Conclusion of it, saith, that *The Lands of the Inhabitants of this Kingdom* were granted to them in Inheritance of the King,  
and

and by the Common Council of the whole Kingdom; which Law doth also provide, *That they shall hold their Lands and Tenements well or quietly, and in Peace, from all unjust Tax and Tillage*: Which is further expounded in the Laws of **Henry** the First, Chap. 4. *That no Tribute or Tax should be taken, but what was due in Edward the Confessor's Time.* So that the Norman Kings claim no other Right in the Lands and Possessions of any of their Subjects, than according to *English Law and Right.*

And so tender were they of *Property* in those times, that when *Justice* it self became Importunate in a Case, no Distress could issue without publick Warrant obtained: Nor that neither, but upon Three Complaints first made. Nay, when *Rape and Plunder* were Rife, and Men seem'd to have no more  
Right

Right to their own, than they had Power to maintain, even then was this Law a sufficient Sanctuary to the Oppressed, by being publicly Pleaded at the Bar against all *Usurpation*; though it were under the Pretence of their Conqueror's Right it self; as by the Case of *Edwin of Sharnbourn* in *Camdens Britannia*, plainly appears.

The like Obligation to maintain this Fundamental Law of *Property*, with the appendent Rights of the People, was taken by *William Rufus*, *Henry the First*, *Stephen*, *Henry the Second*, *Richard the First*, *John*, and *Henry the Third*: Which brings me to that Famous Law, called, *Magna Charta*, or *The Great Charter of England*, of which more anon; it being my Design to shew, That nothing of the *Essential Rights of English Men* was thereby, *De novo* granted, as in Civility to  
King

King *Henry* the Third it is termed; but that they were therein only Repeated and Confirmed. Wherefore I shall return to Antecedent Times, to fetch down the remaining *Rights*.

The second part of this first Fundamental is, *Liberty of Person*. The *Saxons* were so tender in the point of *Imprisonment*, that there was little or no use made of it: Nor would they so Punish their Bond-men, *vinculis coercere rarum est*.

In case of *Debt* or *Damage*, the Recovery thereof was either by a Delivery of the just Value in Goods, or, upon the Sheriffs Sale of the Goods, in Money; and if that satisfied not, the Land was extended: And when all was gone, they were accustomed to make their last Seizure upon the Party's Arms, and then he was reputed an Undone Man,



Man, and cast upon the Charity of his Friends for Subsistence: But his Person was never Imprison'd for the *Debt*: No, not in the King's Case. And to the Honour of King **Alfred** be it spoken, *He Imprison'd one of his Judges for Imprisoning a Man in that Case.*

We find among his Laws this Passage, *Qui immerentem Paganum vinculis constrinxerit, decem solidis noxam sarcito*: “ That if a Man  
 “ should Imprison his *Vassal* or  
 “ *Bondman* Unjustly, his Purgation  
 “ of that Offence should not be  
 “ less than the Payment of Ten  
 “ Shillings: A Summ very considerable in those days, more than Ten Pounds now.

Nor did the Revolution from *Saxon* to *Norman* drop this Priviledge: For besides the general Confirmation of former Rights by **William**, Surnamed the Conqueror, his  
 Son

Son **Henry** the *First*, particularly took such Care of continuing *This part of Property*, inviolable, that, in his Time, no Person was to be Imprisen'd for committing of *Mortal Crime* it self, unless he were first attainted by the *Verdict* of Twelve Men; that is, a Jury, which was to be of the Neighbourhood.

Thus much for the first of my Three Fundamentals, *Right of Estate*, and *Liberty of Person*: That is to say, I am no Man's *Bond-man*, and *what I Possess is Absolutely Mine Own*.

## II. A Voting of every Law that is made, whereby that Ownership or Property may be maintained.

This second Fundamental of our *English* Government, was no In-  
croachment upon the Kings of more  
modern Ages, but extant long be-  
fore the *Great Charter* made in the  
Reign of *Hen. III.* Even as early as  
the *Britain's* themselves; and that  
it continued to the time of *Hen. 3.*  
is evident from several Instances.

**Cesar**, in his Commentaries,  
tells us, That it was the Custom of  
the *Brittish* Cities to Elect their  
General, or Commander in Chief,  
in Case of War? **Dion** assures us,  
in the Life of *Severus* the Empe-  
ror, That in *Brittain* the People  
held

held a *Share* in Power and Government ; which is the modestest Construction his Words will bear. And **Cacitus** in the Life of *Agrippa*, says, They had a Common Council, and that one great Reason of their Overthrow by the *Romans*, was, their not *Consulting with, and Relying upon their Common Council*. Again, Both *Beda* and *Mat. Westminster* tell us, That the *Britain's* summoned a Synod, chose their Moderator, and expell'd the *Pelagian* Creed. All which supposes Popular Assemblies, with Power to order National Affairs.

And indeed, the Learned Author of the *Brittish* Councils gives some Hints to this Purpose, That they had a Common Council, and call'd it ~~kyfr-y~~ *then*.

The *Saxons* were not inferiour to the *Britain's* in this Point, and Story furnisheth us with more  
and

and plainer Proofs. They brought this Liberty along with them, and it was not likely they should loose it, by Transporting themselves into a Country where they also found it. *Tacitus* reports it to have been generally the German-Liberty, like unto the **Concio** of the *Athenians* and *Lacedemonians*.

They called their Free-men **Fri-lingi**, and These had Votes in the Making and Executing the general Laws of the Kingdom.

In **Æthelbert's** time, after the Monck *Austin's* Insinuations had made his Followers a Part of the Government, the *Commune Concilium* was *tam Cleri quam Populi*, as well *Clergy as People*. In *Ina's* time, *Suasus & instituto Episcoporum, omnium Senatorum & natu majorum Sapientum populi*; "Bishops, " Lords, and Wise Men of the " People. **Alfred** after him re-  
form'd



form'd the former Laws, *Consulto sapientum*, by the Advice of the Sages of the Kingdom. Likewise Matters of Publick & General Charge, in Case of War, &c. we have ganted in the Assembly, *Rege, Baronibus & Populo*. By the King, Barons and People. And though the *Saxon Word*, properly imports the Meeting of Wise Men, yet All that would come might be present, and interpose their Like or Dislike of the present Proposition: As that of *Inna*, *in magna servorum Dei frequentia*. Again, *Commune Concilium seniorum & populorum totius regni*; “ The Common Council of the El-  
 “ ders, or Nobles, and People of the  
 “ whole Kingdom. The Council of *Winton*, Ann. 855. is said to be in the Presence of the Great Men, *aliorumq; fidelium infinita multitudo*; “ And an Infinite Multitude of o-  
 “ ther Faithful People; which was  
 nigh

nigh Four Hundred Years before the *Great Charter* was made.

My last Instance of the *Saxon* Ages shall be out of the *Glossary* of the learned *English Knight, H. Spelman*: "*The Saxon Wittan-gemote or Parliament* (saith he) "*is a Convention of the Princes, as well Bishops as Magistrates, and the Free People of the Kingdom*: "And that the said *Wittangemote* "consulted of the common *Safety in Peace and War*, and for the Promotion of the common Good.

*William* of *Normandy* chose rather to rely upon the *People's Consent*, than his own *Power* to obtain the *Kingdom*. He Swore to them to maintain their *old Laws and Privileges*; they to him *Obedience* for his so *Governing* of them: For, as a certain *Author* hath it, *He bound himself to be Just, that he might be Great*; and the *People* to submit

to Justice, that they might be Free. In his Laws, C. 55. "We by the  
 "Common Council of the whole  
 "Kingdom, have granted the Peoples  
 "Lands to them in Inheritance, ac-  
 "cording to their Ancient Laws.

Matters of general Expence upon the whole Body of the People, were settled by this Great Council, especially in the Charge of Arms imposed upon the Subject. The Law saith it to have been done by the *Commune Concilium of the Kingdom.*

So **W. Rufus** and **Henry** the First, were received by the common Consent of the People. And **Stephen's** Words were, *Ego Stephanus, Dei gratia, Assensu Cleri & Populi in Regno Anglia Electus, &c.* "I Stephen, by the Grace of God, and  
 "Consent of the Clergy and People,  
 "Chosen King of England, &c. So King **John** was chosen, *Tam Cleri*  
*quam*

quam Populi unanimi consensu & favore, " By the Favour and Unanimous Consent of the Clergy and People : And his Queen is said to have been Crown'd *de communi consensu & concordi voluntate Archiepiscoporum, Comitum, Baronum, Cleri & Populi totius Regni*, i. e. " by the common Assent and unanimous Good-will of the Archbishops, Bishops, Counts, Barons, Clergy and People of the whole Kingdom. King Edw. I. also desired Money of the *commune Concilium* or Parliament, " as you have given in my time, and that of my Progenitors, Kings, &c.

All which shows, that it was Antecedent to the Great Charter, not the Rights therein repeated and confirmed, but the Act it self.

And King John's Resignation of the Crown to the Pope, being question'd upon some Occasion in  
Edward

**Edward III** Time, it was agreed upon, that he had *no Power to do it, without the Consent of the Dukes, Prelates, Barons, and Commons*: So says the *Parl. Roles*.

And as *Paradoxal* as any may please to think it, 'tis the great Interest of a *Prince*, that the People should have a **Share** in the making of their own Laws; where 'tis otherwise, they are no *Kings of Free-men*, but *Slaves*, and those their *Enemies* for making them so. *Leges nulla alia causa nos tenent, quam quod iudicio populi receptæ sunt*; "The Laws (saith *Ulpian*) do " therefore oblige the People, be-  
" cause they are allowed of by  
" their Judgment. And *Gratian*, in *Dec. distinct. 4. Tum demum humana leges habent vim suam, cum fuerint non modo institutæ, sed etiam firmatæ Approbatione Communitatis*: " It is then (saith he) that  
Humane



“ Humane Laws have their due  
 “ Force, when they shall not only  
 “ be devised, but confirm’d by the  
 “ Approbation of the People.

I. It makes Men *Diligent*, and  
 Encreaseth *Trade*, which advances  
 the Revenue: For where Men are  
 not *Free*, they will never seek to  
 improve, because they are not sure  
 of what they have, and less of  
 what they get.

II. It Frees the Prince from the  
*Jealousie* and Hate of his People;  
 and consequently, the Troubles  
 and Danger that follow; and makes  
 his *Province* easie and safe.

III. If any Inconveniency at-  
 tends the Execution of any Law,  
 the *Prince* is not to be blam’d:  
 It is their own Fault that made  
 It.

I shall now proceed to the *Third*  
*Fundamental*, and by plain Evi-  
 dence prove it to have been a  
 C material

material part of the Government before the *Great Charter* was Enacted.

### III. The People have an Influence upon, and a great Share in the Judicatory Power, &c.

That it was a *Brittish* Custom, I will not affirm, but have some Reason to suppose: For if the *Saxons* had brought it with them, they would also have left it behind them, and in all likelyhood there would have been some Footsteps in *Saxony* of such a Law or Custom, which we find not. I will not enter the Lists with any about it: This shall suffice me, that we find it early among the *Saxons* in this Country; and if they, a Free People in their own Country, settling

pling themselves here as a new Planted Colony, did supply what was defective in their own Government, or add some new Freedom to themselves, as all Planters are wont to do; which are as those first and Corner Stones, their Posterity, with all Care and Skill, are to build upon, That, it self, will serve my turn to prove it a *Fundamental*: That is, such a *first Principle* in our *English* Government, by the Agreement of the People, as ought *not to be Violated*. I would not be understood of the *Number*, but of the *Way of Tryal*: I mean, that *Men were not to be Condemned but by the Votes of the Free men*.

*N. Bacon* thinks that in Ruder Times the *Multitude* Tryed all among themselves; and fancies it came from the *Grecians*, who Determin'd Controversies by the Suf-

frage of 34. or the major part of them.

Be it as it will, *Juries* the Saxons had; for in the Laws of King **Etheldred**, about 300 Years before the Entrance of the *Norman* Duke, we find Enacted, *in singulis Centuriis, &c.* Thus, English'd, "In  
 " every Hundred let there be a Court,  
 " and let Twelve Ancient Free-men,  
 " together with the Lord of the Hun-  
 " dred, be sworn, that they will not  
 " Condemn the Innocent, or Acquit the  
 " Guilty. And so strict were They, of those Ages, in observing this Fundamental Way of Judicature, that **Alfred** put one of his Judges to Death, for passing Sentence upon a Verdict (corruptly obtain'd) upon the Votes of the Jurors, *three of twelve* being in the Negative. If the Number was so sacred, what was the Constitution it self?

The very same King *Executed* another of his *Judges* for passing Sentence of *Death* upon an *Ignoramus* return'd by the *Jury*; and a third, for *Condemning* a Man upon an *Inquest* taken *ex officio*, when as the *Delinquent* had not put himself upon their *Tyral*. More of his *Justice* might be mention'd even in this very *Case*.

There was also a *Law* made in the time of *Ætheldred*, when the *Britans* and *Saxons* began to grow tame to each other, and intercommon amicably, that saith, " *Let there be Twelve Men of Under-*  
" *standing, &c. Six English and Six*  
" *Welsh, and let them deal Justice,*  
" *both to English and Welch.*

Also in those simple times, If a *Crime* extended but to some shameful *Punishment*, as *Pillory* or *Whipping* ( the last whereof, as usual as it has been with us, was



inflicted only upon their Bondmen) the Pennance might be reduc'd to a *Ransom*, according to the Nature of the Fault; but it must be Assesst in the *Presence* of the Judge, and by the *Twelve*, that is, the Jury of *Frilingi* or Free-men.

Hitherto Stories tells us of *Tryals* by *Juries*, and those to have consisted, in general Terms, of *Free-men*: But *Per Pares*, or by *Equals*, came after, occasion'd by the considerable *Saxons*, neglecting that Service, and leaving it to the Inferiour People, who lost the Bench, *Their Ancient Right*, because they were not thought Company for a Judge or Sheriff: And also from the growing *Pride* of the *Danes*, who slighted such a *Rural Judicature*, and despised the Fellowship of the mean *Saxon Free-men* in publick Service. The Wise  
*Saxon*

*Saxon* King perceiving this, and the Dangerous Consequence of submitting the *Lives* and *Liberties* of the *Inferiour* (but not less useful People) to the *Dictats* of any such *Haughty Humour*; and on the other hand, of subjecting the *Nobler Sort* to the *Suffrage* of the *Inferior Rank*, did, with the Advice of his *Wittangemote* or *Parliament*, provide a third Way, more Equal and Grateful, and by Agreement with **Gunthurn** the *Dane*, settled the *Law of Peers*, or *Equals*; which is the *Envy of Nations*, but the famous *Priviledge* of our *English People*: One of those *Three Pillars* the *Fabrick* of this ancient and *Free Government* stands upon.

This *Benefit* gets *Strength* by *Time*, and is receiv'd by the *Norman-Duke* and his *Successors*; and not only confirm'd in the lump

of other Priviledges, but in one notable Case, for all which might be brought to prove, that the *fundamental Priviledges*, mentioned in the *Great Charter*, 9. of *Hen.* were *Before It.* The Story is more at large deliver'd by our learned *Selden*: But thus, *William* having given his half Brother *Odo*, a large Territory in *Kent*, with the *Earldom*; and he taking Advantage at the *King's* being displeased with the Arch-Bishop of *Canterbury*, to possess himself of some of the Lands of that See; *Landfrank*, that succeeded the Arch-Bishop, inform'd hereof, petition'd the King for Justice, *secundum legem terra*, according to the Law of the Land: Upon which the *King* summon'd a *County-Court*, where the Debate lasted three Days, before the *Free-men of Kent*, in the Presence of *Lords and Bishops*, and others skilful in the Law,  
and

and the *Judgment* passed for the  
Arch-Bishop UPON THE  
VOTES OF THE FREE-  
NEM.

By all which it is ( I hope ) suffi-  
ciently and inoffensively manifest-  
ed, that these thre Principles, *viz.*

1. That English men have the  
alone Right of Possession and  
Disposition of what is theirs.

2. That they are Parties to  
the Laws of their Country, for  
the Maintenance thereof.

3. That they have an Infl-  
uence upon, and a real Share in  
the Judicatory Power, that  
applies those Laws have been  
the Ancient Rights of the King-  
dom, and common Basis of the  
Government : That which *Kings*,  
under all Revolutions have Sworn  
to maintain, and History affords us  
so many Presidents to confirm. So  
that the *Great Charter* made in the

9th of **Henry** the III. was not the *Nativity*, but *Restoration* of *Ancient Priviledges* from abuses. No *Grant* of *New Rights*, but a *New Grant*, or *Confirmation* Rather, of *Ancient Laws and Liberties*, violated by King **John**, and restored by his Successor, at the Expence of a long and bloody War; which shewed them as resolute to keep, as their Ancestors had been careful to make those excellent Laws.

And so I am come to the *Great Charter*, which is comprehensive of what I have already been discoursing, and which I shall briefly touch upon, with those successive *Statutes* that have been made in Honour and Preservation of it.

I shall rehearse so much of it as falls within the Consideration of the foregoing Matter (which is a great deal in a little) with something



thing of the Formality of *Grant*  
and *Curse*; that this age may see,  
with what *Reverence* and *Circum-*  
*spection* our *Ancestors* govern'd  
themselves in *Confirming* and *Pre-*  
*serving* of it.

“ *Henry, by the Grace of*  
“ *God King of England, &c.*  
“ *To all Arch-Bishops, Earls,*  
“ *Barons, Sheriffs, Provosts,*  
“ *Officers, unto all Bailiffs,*  
“ *and our faithful Subjects,*  
“ *who shall see this present*  
“ *Charter, Greeting, Know*  
“ *ye, that we, unto the Ho-*  
“ *nour of Almighty God,*  
“ *and for the Salvation of*  
“ *the Souls of our Proge-*  
“ *nitores, and our Successors,*  
“ *Kings*

“ Kings of *England*, to the  
 “ Advancement of Holy  
 “ Church, and Amendment  
 “ of our Realm, of our  
 “ *meer and free will* have gi-  
 “ ven and granted to all  
 “ Arch-Bishops, &c. and  
 “ to all *free-men* of this our  
 “ Realm, these Liberties  
 “ underwritten, to be hold-  
 “ en and kept in this our  
 “ Realm of *England* for e-  
 “ vermore.

Tho' in Honour to the King, it  
 is said to be out of his *meer and  
 free Will*, as if it were his meer Fa-  
 vour, yet the Qualification of the  
 Persons, he is said to grant the en-  
 suing Liberties to, shews, that  
 they

they are Terms of Formality, viz. *To all Free-men of this Realm.* Which supposes there were *Free-men* before this Graunt; and that character also Implies they must have had *Laws* and *Liberties*: Consequently, this was not an Infranchising of them, but a *confirming* to Free-men their just Priviledges they had before. The Words of the Charter are these.

“ **A Freeman** shall not be  
 “ *Amerced* for a small Fault,  
 “ but *after* the *Quantity* of  
 “ the *Fault*, and for a great  
 “ Fault, after the Manner  
 “ thereof, saving to him  
 “ his *Contentements* or *Free-*  
 “ *hold*: And a *Merchant*  
 “ likewise shall be amerced,  
 “ saving

“ saving to him his Mer.  
 “ chandize; and none of the  
 “ said Amercements shall be  
 “ assessed, but by the Oath  
 “ of good and honest Men  
 “ of the Vicinage.

“ No free man shall be  
 “ taken or Imprison'd, nor be  
 “ disseized of his free-hold or  
 “ Liberties, or free Customs,  
 “ or be outlaw'd or exiled,  
 “ or any other ways destroy.  
 “ ed; nor we shall not pass  
 “ upon him, nor condemn  
 “ him, but by Lawful Judg.  
 “ ment of his Peers, or by the  
 “ Law of the Land. We  
 “ shall sell to no Man, we  
 “ shall deny, or defer to  
 “ no

“ no Man, either Justice or  
 “ Right.

I stand amazed, how any Man can have the Confidence to say, *These Priviledges were extorted by the Barons Wars*, when the King declares, that what he did herein, was done **freely**: Or that they were *New Priviledges*, when the very Tenour of the Words proves the *contrary*: For *Freehold, Liberties, or Free Customs*, are by the Charter it self supposed to be in the Possession of the Free men at the making and publishing thereof. For observe, **No free-man shall be taken or imprison'd**: Then he was *Free*: This Liberty is his Right. Again, **No free man shall be disseized of his freehold, Liberties or free Customs**. Then certainly he was *in Possession* of Them:



them: And that great Doctor in the Laws of *England*, Chief Justice *Cook*, in his Proem to the 2d Part of his *Institutes*, tells us, that *these Laws and Liberties were gathered and observed, amongst others, in an intire Volumn, by King Edward the Confessor; confirmed by William, surnamed the Conqueror; which were afterwards ratified by Henry the first; enlarged by Henry the second, in his Constitutions at Clarendon; and after much Contest, and Blood spilt, between King John and the Barons concerning them, were solemnly established at Running-Mead by Stanes: And lastly, brought to their former Station, and publish'd by this King Henry the Third, in the 9th Year of his Reign.*

And though Evil Counsellors would have provok'd him to void his Father's Act and his own, as if the first had been the Effect

Effect of *Force*, the other of *Non-Age*; yet it so pleased Almighty God, who hath ever been Propitious to this Ungrateful Island, that in the 20 Year of his Reign, he did Confirm and Compleat this *Charter*, for a perpetual Establishment of Liberty to all *Free-born English Men*, and their Heirs for ever: Ordaining, *Quod contravenientes per dominum Regem, cum convicti fuerint, graviter puniantur. i. e.* “ But “ whosoever should Act any Thing “ contrary to these Laws, upon “ Conviction should be grievously “ Punished by our Lord the King. And in the 22th Year of his Reign, it was Confirmed by the Statute of *Marleb*, Chap. 5. And so Venerable an Esteem have our Ancestors had for this *Great Charter*, and indispensibly necessary have they thought it to their own and Posterities Felicity, that it hath been  
above

above **Thirty** Times Ratified, and Commanded, under great *Penalties*, to be put in Execution.

Here are the Three *Fundamentals* Comprehended and Exprest, to have been the Rights and Priviledges of *English* Men.

I. Ownership, *consisting of Liberty and Property. In that it supposes English Men to be Free, there's Liberty: Next, that they have Freeholds, there's Property.*

II. *That they have the Voting of their own Laws: For that was an Ancient Free Custom, as I have already Prov'd, and all such Customs are expresly Confirmed by this Great Charter: Besides, the People help'd to make It.*

III. *An Influence upon, and a real Share in the Judicatory Power, in the Execution and Application Thereof.*

This

This is a Substantial Part, *Thrice* provided for in those sixteen Lines of the Great Charter before Re-  
 hers'd: 1. *That no Amercement shall be Assessed, but by Oath of Good and Honest Men of the Vicinage.* 2. *Nor we shall not pass upon him, nor condemn him, but by Lawful Judgment of his Peers.* 3. *Or by the Law of the Land: Which is Synonimous, or a Saying of equal Signification with Lawful Judgment of Peers: For Law of the Land, and Lawful Judgment of Peers, are the Proprium quarto modo, or Essential Qualities of these Chapters of our Great Charter; being communicable Omni, soli & semper, to all and every Clause thereof alike.*

Chief Justice Cook well observes, in his Second Institutes, that *per Legem Terra*, or by the Law of the Land, imports no more than a  
 Tryal

*Tryal by Proceſs, and Writ original at common Law*; which cannot be without the Lawful Judgment of *Equals*, or a *Common Jury*: Therefore *per Legale Judicium Parium*, by the Lawful Judgment of Peers, and *per Legem Terra*, by the Law of the Land, plainly ſignifie the ſame Priviledge to the People. So that it is the Judgment of the *Free-men of England*, which gives the Caſt, and turns the Scale in Engliſh Juſtice.

THESE Things being ſo evidently prov'd by long Uſe, and ſeveral Laws, to have been the *First Principles* or *Fundamentals* of the *Engliſh Free Government*, I take leave to Propoſe this Queſtion; *May the Free People of England be juſtly Deſſeized of all, or any of theſe Fundamentals without their Conſent Collectively?*

*Anſw.*



*Answ.* With Submission, I conceive, *Not* ; for which I shall produce, first my *Reasons*, then *Authorities*.

I. Through the *Brittish, Saxon* and *Norman* Times, the People of this Island have been reputed and call'd *Free-men* by *Kings, Parliaments, Records* and *Histories* : And as a *Son* supposes a *Father*, so *Free-men* suppose **Freedom**. This Qualification imports an Absolute Right : Such a Right as none has Right to Disseize or Dispossess an English Man of : Therefore an Unalterable Fundamental Part of the Government.

II. It can never be thought, that they intrusted any *Representatives* with these Capital Priviledges, further than to use their best Skill to Secure and Maintain Them.  
They

They never so Delegated or Impower'd any Men, that, *de jure*, they could deprive them of that Qualification? And a *Facto* and *Jus non valet Argumentum*: For the Question is not, *What May be done?* but *what Ought to be done?* Overseers and Stewards are Impower'd, not to *Alienate*, but *Preserve* and *Improve* other Mens Inheritances. No Owners deliver their Ship and Goods into any Man's Hands to give them away, or run upon a Rock; neither do they consign their Affairs to Agents or Factors without Limitation. All *Trusts* suppose such a Fundamental Right in them that give them, and for whom the *Trusts* are, as is altogether Indissoluble by the Trustees. The *Trust* is the *Liberty* and *Property* of the People; the Limitation is, that

It

It should not be Invaded, but Inviolably Preserved, according to the Law of the Land.

III. If *Salus Populi* be *Suprema Lex*, the Safety of the People the *Highest* Law, as say several of our Ancient Famous *Lawyers* and *Law-Books*; then since the aforesaid *Rights* are as the *Sinners* that hold together this *Free Body Politick*; It follows, They are at least a part of the Supreme Law, and therefore ought to be a *Rule* and *Limit* to all Subsequent Legislation.

IV. The Estate goes before the Steward, the Foundation before the House, *People* before their *Representatives*, and the Creator before the Creature. The Steward Lives by Preserving the Estate; the House stands by Reason of its Foundation;

on; the *Representative* depends upon the *People*, as the *Creature* subsists by the Power of its Creator.

Every *Representative* may be called, the *Creature of the People*, because the *People* make them, and to Them they Owe their Being. Here is no *Transessentiating* or *Transubstantiating* of Being, from *People* to *Representative*, no more than there is an absolute Transferring of a Title in a *Letter of Attorney*.

The very Term *Representative* is enough to the contrary: Wherefore as the House cannot stand without its Foundation, nor the *Creature* subsist without its Creator; so can there be *No Representative without a People*, nor that *People Free*, which all along is intended (as inherent to, and inseparable from the *English People*) *without Freedom*; nor can there be

be any *Freedom* without something be *Fundamental*.

In short, I would fain know of any Man how the Branches can cut up the Root of the Tree that bears them? How any *Representative*, that is not only a meer *Trust* to preserve *Fundamentals*, the Peoples Inheritance; but that is a *Representative* that makes Laws, by Virtue of this Fundamental Law, viz. that the People have a Power in *Legislation* (the 2d Principle prov'd by me) can have a Right to Remove or *Destroy* that Fundamental? The Fundamental makes the People Free, this Free People make a *Representative*; Can this *Creature* unqualifie its *Creator*? What Spring ever rose higher than its Head? The Representative is at best but a true *Copy*, an *Exemplification*; the Free People are the *Original*, not Cancellable by a *Transcript*:

D

And



And if that Fundamental which gives to the People a Power of *Legislation*, be not Nulable by that *Representative*, because it makes them what they are; much less can that *Representative* Disseize Men of their *Liberty* and *Property*, the first Great *Fundamental*, that is, **Parent** of this Other; and which Intitles to a Share in *making Laws* for the Preserving of the first Inviolable.

Nor is the *Third* Fundamental other than the necessary Production of the two first, to intercept *Arbitrary Designs*, and make *Power Legal*: For where the People have not a *Share in Judgment*, that is, in the Application, as well as making of the Law, the other two are Imperfect; open to daily Invasion, should it be our Infelicity ever to have a Violent Prince.

For

For as *Property* is every day expos'd, where those that have it are destitute of Power to Hedge it about by *Law-making*; so those that have both, if they have not a Share in the Application of the Law, how easily is that Hedge broken down?

And indeed, as it is a most Just and Necessary, as well as Ancient and Honourable Custom, so it is the *Princes Interest*: For still the People are concern'd in the Inconveniences with him, and he is freed from the Temptation of doing Arbitrary Things, and their Importunities, that might else have some Pretence for such Adresses, as well as from the Mischiefs that might ensue such Actions. It might be enough to say, that there are above **fifty Statutes** now in Print, besides Its venerable Antiquity, that Warrant and Confirm this *Le-*

*gale judicium Parium suorum*, or the Tryal of *English Men by their Equals*.

But I shall hint at a few Instances: The first is, *The Earl of Lancaster*, in the 14th of *Edw. II.* adjndged to dye without Lawful Tryal of his Peers: And afterwards *Henry Earl of Lancaster* his Brother, was Restored. The Reasons given were two: 1. Because the said *Thomas* was not *Arraign'd and put to Answer*. 2. That he was *put to Death without Answer, or Lawful Judgment of his Peers*. The like Proceedings were in the Case of *John of Gaunt*, p. 39. *Coram Rege*. And in the *Earl of Arundel's Case*, *Rot. Parl.* 4 *Edw. 3.* n. 13. Also in *Sir John Alee's Case* 4 *Edw. III.* n. 2. Such was the Destruction committed on the Lord *Hastings* in the Tower of *London*, by *Richard the III.* But above all,  
the

the Attainder of **Tho. Cromwel**,  
*Earl of Essex*, who was attainted  
 of High Treason, as appears *Rot.*  
*Parl.* 32. *Hen.* 8. of which, saith  
 Chief Justice *Cook*, as I remember,  
 “ *Let Oblivion take away the Memo-*  
 “ *ry of so foul a Fact, if it can; if*  
 “ *not, however, let Silence cover it.*

’Tis true, there was a Statute  
 obtained in the 11th of **Henry** the  
 7th, in Defiance of the *Great Char-*  
*ter*, which Authoriz’d several Ex-  
 actions, contrary to the Free Cu-  
 stoms of this Realm: Particularly  
 in the Case of *Juries*, both *Sessing*  
 and *Punishing*, by *Justices of Assize*,  
 and of the *Peace*, without the Fi-  
 ning and Presentment of *Twelve*  
*Free-men*. **Empson** and **Dudley**  
 were the great Actors of those Op-  
 pressions; but they were *Hang’d*  
 for their Pains, and that Illegal  
 Statute repealed in the 1st of *Hen-*  
*ry* the 8th Ch. 6.

The Consequence is plain; That Fundamentals give *Rule* to Acts of Parliament, else why was the Statute of the 8<sup>th</sup> Edw. 4. Ch. 2. of *Liveries and Information*, by the Discretion of the Judges, to stand as an **Original**; and this of the 11<sup>th</sup> of Henry the 7<sup>th</sup>, repealed as **Illegal**? For, therefore any Thing is Unlawful, because it Transgresseth a Law. But what Law can an *Act* of Parliament Transgress, but that which is Fundamental? Therefore Tryal by *Juries* or Lawful Judgment of *Equals*, is by *Acts* of Parliament confest to be a *Fundamental* Part of our Government. And because Chief Justice Cook is so generally Esteem'd an *Oracle of the Law*, I shall in its proper place present you with his Judgment upon the whole Matter.



V. These Fundamentals are *Unalterable* by a *Representative*, which were the Result and Agreement of *English Free-men* Collectively, the Ancienter Times not being acquainted with Representatives : For then the Free-men met in their own Persons. In all the *Saxon* Story we find no Mention of any such Thing ; for it was the *King, Lords and Free-men : The Elders and People.* And at the Counsel of *Winton*, in 855. is reported to have been present, *the Great Men of the Kingdom, and an Infinite Multitude of other faithful People.* Also That, of King *Ina*, the common Council of the *Elders and People of the whole Kingdom :* That is, the most or generality of the Free-men of the Kingdom ; for all might come that pleased. Is it not to be doubted but this continued after the *Norman* Times,

and that at *Running-Mead* by *Stanes*, the *Free-men* of England were **Personally** Present at the Confirmation of that Great Charter, in the Reign of King *John*. But as the Ages grew more Humane, and Free with respect to *Villains* and *Retainers*, and that the Number of *Free-men* Encreased, there was a Necessity for a Representative; especially, since Eundamentals were long ago agreed upon, and those Capital Priviledges put out of the Reach and Power of a little Number of Men to endanger. And so careful were the Representatives of the People, in the time of *Edward the Third*, of suffering their Liberties and Free Customs to be infring'd, that in Matters of extraordinary Weight, they would not determin, till they had first return'd to, and conferr'd with their several Counties or Burroughs that delegated them.

*them.* Thus the Parl. Roles of his time.

*Several Authorities, in Confirmation of the Reasons, before-mentioned.*

So indubitably are these *Fundamentals*, the *Peoples Right*, and so necessary to be preserved, that *Kings* have successively known no other *Safe or Legal Passage to their Crown and Dignity*, than their *Solemn Obligation*, inviolably to maintain them. " So Sacred were " they Reputed in the Days " of *Henry* the III. that not to " Continue or Confirm them, " was to *Affront God*, and to " *Damn* the Souls of his Progenitors " and Successors ; and to Depress the " Church, and Deprave the Realm : " That the Great Charter compre- " hensive of them should be allow'd

“ as the Common Law of the  
 “ Land, by all Officers of Justice;  
 “ that is, the Lawful Inheritance  
 “ of all Commoners: That all Sta-  
 “ tute-Laws or Judgments whatso-  
 “ ever, made in Opposition thereunto,  
 “ should be null and void: That all  
 “ the Ministers of State and Officers  
 “ of the Realm, should constantly be  
 “ Sworn to the Observation thereof.  
 And so deeply did after-Parliaments  
 Reverence it, and so Careful were  
 they to Preserve it, that they both  
 Confirm’d it by **Thirty two** se-  
 veral Acts, “ and Enacted Copies  
 “ to be taken and Lodg’d in each  
 “ Cathedral of the Realm, to be read  
 “ four times a Year Publickly before  
 “ the People: As if they would  
 have them more oblig’d to their  
 Ancestors for Redeeming and Trans-  
 mitting those Priviledges, than for  
 Begetting them: And that Twice  
 every Year the Bishops, apparel’d in  
 their

*their Pontificials, with Tapers burning, and other Solemnities, to Pronounce the greater Excommunication against the anfringers of the Great Charter, though it were but in Word or Counsel; for so saith the Statute. I shall, for further Satisfaction, repeat the Excommunication or Curse Pronounced both the in Days of Hen. the third, and Ed. the first.*

*The Sentence of the Curse given by the Bishops, with the King's Consent, against the Breakers of the Great Charter.*

“ **I** N the Year of our Lord 1253.  
 “ third Day of May, in the  
 “ great Hall of the King at West-  
 “ minster, in the Presence, and by  
 “ the Consent of the Lord Henry,  
 “ by the Grace of God King of Eng-  
 “ land, and the Lord Richard, Earl  
 of



“ of *Cornwall*, his Brother; *Roger*  
 “ *Bigot*, Earl of *Norfolk*, Marshal of  
 “ *England*; *Humphry*, Earl of *Here-*  
 “ *ford*; *Henry*, Earl of *Oxford*; *John*,  
 “ Earl *Warren*; and Other Estates  
 “ of the Realm of *England*; We  
 “ *Boniface*, by the Mercy of God,  
 “ Arch-Bishop of *Canterbury*, Pri-  
 “ mate of *England*, *F. of London*, *H.*  
 “ of *Ely*, *S. of Worcester*, *E. of Lin-*  
 “ *coln*, *W. of Norwich*, *P. of Here-*  
 “ *ford*, *W. of Salisbury*, *W. of Dur-*  
 “ *ham*, *R. of Excester*, *M. of Carlile*,  
 “ *W. of Bath*, *A. of Rochester*, *T. of*  
 “ *St. Davids*, Bishop, apparell’d in  
 “ Pontificials, with Tapers burn-  
 “ ing, against the Breakers of the  
 “ Churches Liberties, and of the  
 “ Liberties and other Customs of  
 “ this Realm of *England*, and name-  
 “ ly these which are contained in  
 “ the Charter of the Common Li-  
 “ berties of *England*, and Charter of  
 “ the *Forrest*, have Denounced Sen-  
 “ tence

" tence of Excommunication in this  
 " Form, by the Authority of Al-  
 " mighty God, the Father, the Son,  
 " and the Holy Ghost, &c. of the  
 " Blessed Apostles *Peter and Paul*,  
 " and of all Apostles, and of all Mar-  
 " tyrs, of Blessed *Edward* King of  
 " *England*, and of all the Saints of  
 " Heaven. We Excommunicate &  
 " Accurse, and from the Benefit of  
 " our Holy Mother, the Church, we  
 " Sequester all those that hereafter  
 " willingly and maliciously deprive  
 " or spoil the Church of her Right;  
 " and all those that by any Craft or  
 " Willingness, do violate, break, di-  
 " diminish, or change the Churches  
 " Liberties, and and Free Customs  
 " contained in the Charters of the  
 " Common Liberties, and of the  
 " *Forrest*, granted by our Lord the  
 " King, to Arch-Bishops, Bishops,  
 " and other Prelates of *England*, and  
 " likewise to the Earls, Barons,  
 " Knights.

“ Knights and other Freeholders of  
 “ the Realm; and all that secretly  
 “ and openly, by Deed, Word or  
 “ Counsel to make Statutes, or ob-  
 “ serve them being made, and that  
 “ bring in Customs, to keep them,  
 “ when they be brought in, against  
 “ the said Liberties, or any of them,  
 “ and all those that shall presume  
 “ to Judge against them; and all &  
 “ every such Person before-menti-  
 “ on’d, that wittingly shall commit  
 “ any Thing of the Premises, let  
 “ them well know, that they incur  
 “ the aforesaid Sentence, *ipso facto*.

*The Sentence of the Clergy a-  
 gainst the Breakers of the  
 Articles above-mentioned.*

“ **I**N the Name of the Father, the  
 “ Son, and the Holy Ghost,  
 “ Amen: Whereas our Sovereign  
 “ Lord the King, to the Honour of  
 “ God,

" God, and of Holy Church, and for  
 " the common Profit of the Realm,  
 " hath granted for him, and his  
 " heirs for ever these Articles above-  
 " written, *Robert* Arch-Bishop of  
 " *Canterbury*, Primate of all *Eng-*  
 " *land*, Admonished all his Province  
 " once, twice & thrice, because that  
 " shortness will not suffer so much  
 " delay, as to give knowledge to all  
 " the People of *England*, of these  
 " Presents in Writing: We there-  
 " fore enjoyn all Persons, of what  
 " Estate soever they be, that they,  
 " and every of them, as much as in  
 " them is, shall uphold and main-  
 " tain these Articles granted by our  
 " Sovereign Lord the King, in all  
 " Points: And all those that in any  
 " Point do resist or break, or in any  
 " manner hereafter Procure, Coun-  
 " sel, or in any wise Assent to, Te-  
 " stifie or Break those Ordinances,  
 " or go about it, by Word or Deed,  
 " openly

“ openly or privily, by any man-  
 “ ner of Pretence or Colour; we,  
 “ the aforesaid Arch-Bishops, by  
 “ our Authority in this Writing ex-  
 “ pressed, do Excommunicate and  
 “ Accurse, and from the Body of our  
 “ Lord Jesus Christ, & from all the  
 “ Company of Heaven, and from all  
 “ the Sacraments of Holy Church  
 “ do sequester and exclude.

We may here see, that in the  
 obscurest Times of *Popery*, they  
 were not left without a Sence of  
 Justice, and a Care of Freedom;  
 and that even *Papists*, whom many  
 think no Friends to Liberty and  
 Property, under Dreadful Penal-  
 ties, injoy an Inviolable Obser-  
 vance of this Great Charter, by  
 which they are Confirmed. And  
 though I am no *Roman Catholick*,  
 and as little value their other  
 Curses pronounc'd upon Religious  
 Dissents,



Diffents, yet I declare ingenuously, I would not, for the World, incur this Curse, as every Man, *deservedly doth*, that offers Violence to the Fundamental Freedoms thereby repeated and confirmed. And that any *Church*, or *Church Officers* in our Age, should have so little Reverence to *Law*, *Excommunication* or *Curse*, as to be the Men that either Vote or Countenance such Severities, as bid Defiance to the *Curse*, and Tare this memorable *Charter* in pieces', by Disseizing *Free-men* of *England* of their *Freeholds*, *Liberties* and *Properties*, without *Juries*, or meerly for the Inoffensive Exercise of their Conscience to God in Matters of Religion, is a *Civil Sort* of Sacrilege.

I know it is usually objected, That a great Part of the *Charter* is spent on the Behalf of the Roman Church

Church, and other Things now abolish'd; and if one Part of the great Charter may be repeal'd or invalidated, why not the other?

But to this I answer, that the True Fundamentals in the Charter, are not the less firm or forceable, or Inviolable for that; because they do not stand upon the Legs of that *Act*, though it was made in Honour of them, but the *Ancient and Primitive Institution of the Kingdom*. If the *Petition of Right* were repeal'd, the great Charter were never the less in Force, It not being the *Original Establishment*, but a *Declaration and Confirmation* of that Establishment. But those Things that are abrogable or abrogated in the great Charter, were never a Part of the Fundamentals, but hedg'd in by the *Clergy* and allowed by the *Barons* upon present Emergency.

Besides,

Besides, that which I have hitherto maintained to be the Common and Fundamental Law of the Land, is so reputed, and further ratified by the *Petition of Right*, 3 *Car. 1.* which was long since the *Church of Rome* lost her Share in the *Great Charter*. Nor did it relate to Matters of Faith and Worship, but Temporalities only; the *Civil Interest* or *Propriety* of the Church. But with what Pretence to Mercy or Justice can the *Protestant Church* retain the *English Part* of the Charter without conforming to *Rome*, and yet now cancel the *English Part* it self to every *Free-born English Man* that will not Conform to Her? But no more of this at this Time; only give me leave to remind a Sort of active Men in our Times, that the cruel Infringers of the Peoples Liberties, and Violaters of these Noble Laws,  
did

did not escape with bare *Excommunications* and *Curses*; for such was the Venerable Esteem our Ancestors had for these Great Priviledges, and deep Sollicitude to preserve them from the Defacings of Time, or Usurpation of Power, that King **Alfred** executed 40 **Judges** for warping from the ancient Laws of the Realm. **Hubert de Burgo**, Chief Justice of *England*, in the Time of *Edw. 1.* was sentenced by his Peers in open Parliament, for advising the King *against the Great Charter!* Thus the **Spencers**, both Father and Son, for there *Arbitrary Rule* and *Evil Council* to *Edw. 2.* were expelled the Realm. No better Success had the Actions of **Treilian** and **Belknap**: And as for **Empton** and **Dudley**, though Persons of Quality, in the time of King *Henry the 7th*, the most ignominious Death

Death of our Country, such as belongs to *Theft* and *Murder*, was hardly Satisfaction enough to the Kingdom, for their *Uncharteral* Proceeding. I shall chose to deliver it in the Words of Chief Justice *Cook*, a Man, whose Learning in Law hath, not without Reason, obtained him a venerable Character of our *English* Nation.

“ There was (saith he) an Act  
 “ of Parliament, made in the 11th  
 “ Year of King *Hen. 7.* which had  
 “ a Fair Flattering Preamble, pre-  
 “ tending to avoid divers Mis-  
 “ chiefs, which were (1st) *To the*  
 “ *high Displeasure of Almighty God,*  
 “ (2dly) *The great Let of the Com-*  
 “ *mon Law.* And (3dly) *The great*  
 “ *Let of the Wealth of this Land.*  
 “ And the Purven of that Act,  
 “ tended, in the Execution, con-  
 “ trary, EX DIAMETRO, viz.  
 “ *To the high Displeasure of Almigh-*  
 “ ty



" ty God, and the great Let, nay,  
 " the utter Subversion of the Common  
 " Law, and the great Let of the  
 " Wealth of this Land, as hereaf-  
 " ter shall appear; the Substance  
 " of which Act follows in these  
 " Words.

" **T** Hat from henceforth,  
 " as well Justices of  
 " Assize, as Justices of the  
 " Peace, in every County, up-  
 " on Information for the King,  
 " before them made, with-  
 " out any Finding or Present-  
 " ment by Twelve Men, shall  
 " have full Power and Autho-  
 " rity, by their Discretion;  
 " and to hear and determine all  
 " Offences, as Riots, unlaw-  
 " ful Assemblies, &c. com-  
 " mitted

"mitted and done against any  
 "Act or Statute made, and  
 "not repeal'd, &c.

"By Pretext of this Law,  
 "Emplon and Dudley did com-  
 "mit upon the Subject insufferable  
 "Pressure and Oppressions; and  
 "therefore this Statute *was justly,*  
 "*soon after the Disease of Hen. 7.*  
 "*repealed at the next Parliament,*  
 "by the Statute of 1 Hen. the 8.  
 "chap. 6.

"A good Caveat, says he, to  
 "Parliament to leave all Causes to  
 "be measnr'd by the Golden and strait  
 "Metwand of the Law, and not to  
 "the Incertain and Crooked Cord  
 "of **Discretion**. He goes on,

"It is almost Incredible to fore-  
 "see, when any Maxim, or Fun-  
 "damental Law of this Realm is  
 "altered (as elsewhere hath been  
 "observed

“ observed ) what *dangerous* In-  
 “ conveniences do follow : Which  
 “ most expresly appears by this  
 “ **Most Unjust and strange Act**  
 “ of the 11th of *Hen.* 7. For here-  
 “ by not only **Empton** and **Dand-**  
 “ **ley** themselves, but such Justices  
 “ of Peace (Corrupt Men) as they  
 “ caused to be authorised, Com-  
 “ mitted most *Grievous* and *Hea-*  
 “ *vy* Oppressions and Exactions:  
 “ *Grinding* the Faces of the Poor  
 “ Subjects by Penal Laws (be they  
 “ never so obsolect, or unfit for the  
 “ Time) by Information only,  
 “ *without any Presentment or Tryal*  
 “ *by Jury*, being the **Ancient**  
 “ **Birth Right** of the Subject;  
 “ but to hear and determine the  
 “ same, by their Discretions; in-  
 “ flicting such Penalty as the Sta-  
 “ tutes not repealed, imposed.  
 “ These, and other like Oppressi-  
 “ ons and Exactions by the Means  
 of

“ of **Emplon** and **Dudley** and  
 “ their Instruments, brought infi-  
 “ nite Treasure to the King’s Cof-  
 “ fers, whereof the King himself,  
 “ at the End, with **Great Grief**  
 “ and **Compunction Repented**,  
 “ as in another Place we have ob-  
 “ served.

“ This Statute of the 11<sup>th</sup>. of  
 “ *Hen. 7.* we have recited, and  
 “ shewed the just Inconveniencies  
 “ thereof; to the End that the like  
 “ should **Never** hereafter be at-  
 “ tempted in any Court of Parlia-  
 “ ment; and that others might  
 “ avoid the **fearful End** of those  
 “ two Time-Servers, **Emplon**  
 “ and **Dudley**, *Qui eorum vestigi-*  
 “ *is insistant, exitus perhorrescant.*  
 Thus much chief Justice Cook.

I am sure, there is nothing I  
 have offer’d in Defence of *English*  
 Law-Doctrine, that riseth higher  
 than the Judgment and Language

of this great Man, the Preservation and Publication of whose Labours became the Care of a great Parliament. And it is said of no inconsiderable *Lawyer*, that he should thus express himself in our occasion, *viz.* *The Laws of England were never the Dictates of any Conqueror's Sword, or the Placita of any King of this Nation; or (saith he) to speak impartially and freely, the Results of any Parliament that ever sat in this Land.*

Thus much for the *Nature of English Rights*, and the *Reason and Justice* for their Inviolable Maintenance. I shall now offer some more general Considerations for the Preservation of *Property*; and therein hint at some of those Mischiefs that follow *spoiling* it, for Conscience sake, both to *Prince and People*.

# I. The Reason of the *Alteration* of



of any Law, ought to be the *Discommodity* of Continuing it; but there can never be so much as the least Inconveniency in continuing That of *Liberty* and *Property*; therefore there can be no just Ground for *Infringing*, much less *Abrogating* the Laws that secures them.

II. No Man in *England* is born *Slave* to another; neither hath One Right to inherit the Sweat of the others Brow, or Reap the Benefit of his Labour, but by Consent; therefore no Man should be deprived of his *Property*, unless he injure another Man's; and then by Legal Judgment.

III. But certainly, nothing is more unreasonable than to *sacrifice* the Liberty and Property of any Man ( being his Natural and Civil Rights ) for *Religion*, where he is not found breaking any Law relating to Natural and Civil Things.

*Religion*, under any Modification, is no Part of the old *English* Government: *Honeste vivere, Alterum non ledere, jus suum cuique tribuere*, are enough to entitle every Native *English* Priviledges. A Man may be a very good *English* Man, and yet a very indifferent *Churchman*. Nigh 300 Years before *Austin* set his Foot on *English* Ground, had the Inhabitants of this Island a **free** Government. It is Want of distinguishing between *It* and the *Modes* of Religion, which fills every Clamorous Mouth with such impertinent Cries as this; *Why do not you submit to the Government?* As if the *English* Civil Government came in with *Luther*, or were to go out with *Calvin*. What Prejudice is it for a *Popish* Landlord to have a *Protestant* Tenant; or a *Presbyterian* Tennant to have an *Episcopalian* Landlord? Certainly,

tainly, the *Civil Affairs* of all Governments in the World may be Peaceably transacted under the different *Liveries* or *Trims of Religion*, where Civil Rights are inviolably observ'd.

Nor is there any Interest so inconsistent with Peace and Unity, as *That* which dare not solely rely upon the Power of *Perswasion*, but affects *Superiority*, and seeks after an *Earthly Crown*. This is not to act the *Christian*, but the *Cesar*; not to promote *Property*, but *Party*, and make a Nation *Drudges* to a *Seet*.

Be it known to such narrow Spirits, we are a *Free People* by the *Creation* of God, the *Redemption* of Christ, and carefull *Provision* of our ( never to be forgotten ) Honourable Ancestors: So that our Claim to these *Englisch Priviledges* rising higher than the Date of *Pro-*

*testancy*, can never justly be invalidated for *Non-conformity* to any Form of it. This were to *Loose* by the Reformation, which God forbid: I am sure 'twas to *enjoy Property*, with *Conscience*, that Promoted it. Nor is there a much better *Definition* of *Protestancy*, than *Protesting against Spoiling Property for Conscience*. I must therefore take Leave to say, that I know not how to Reconcile what a Great Man lately deliver'd in his Eloquent Speech to the *House of Lords*: His Words are these:

“ For when we consider Religion in *Parliament*, we are  
 “ supposed to consider it as a  
 “ *Parliament* should do, and as  
 “ *Parliaments* in all Ages have  
 “ done; that is, as it is a Part of  
 “ our Laws, a Part and a *necessary*  
 “ Part of our Government: For  
 “ as

“ as it works upon the Conscience,  
 “ as it is an **Inward Principle**  
 “ of the **Divine Life**, by which  
 “ good Men do Govern all their  
 “ Actions, *the State hath nothing*  
 “ *to do with it* : It is a Thing which  
 “ belongs to *another* kind of Com-  
 “ mission, than that by which we  
 “ sit here.

I Acquiesce in, and Honour the  
 latter Part of this Distinction, ta-  
 king it to be a Venerable Truth ;  
 and would to God Mankind would  
 Believe it, and Live it : But how  
 to agree it with the former, I pro-  
 fess Ignorance : For if the Govern-  
 ment had nothing to do with the  
*Principle* it self, what more can *She*  
 pretend over the Actions of those  
 Men, who Live that *Good Life* ?  
 Certainly, if *Religion* be an Inward  
 Principle of *Divine Life*, exerting  
 it self by Holy Living, and that,



as such, it belongs not to the Commission of our Superiours, I do with Submission conceive, that there is very little else of *Religion* left for them to have to do with: The rest merits not the *Name* of Religion, and less doth such a *Formality* deserve Persecution. I hope such Circumstances are no necessary Part of *Englesb* Government, that cannot reasonably be Reputed a necessary Part of *Religion*: And, I believe, he is too great a *Divine* and *Lawyer*, upon second Thoughts, to Repute that a *Part of our Laws*, a *Part* and a necessary Part of our Government, that is such a Part of Religion, as is neither the *Divine Principle*, nor yet the *Actions immediately flowing from it*; since the Government was most Compleat and Prosperous many Ages without it, and hath never known more perplex'd Contests and Troublesome

some Interruptions, than since it hath been receiv'd and valu'd as a Part of the *English* Government : And God, I hope, will forbid it in the *Hearts* of our Superiours, that *English* Men should be deprived of their *Civil Inheritance* for their *Non-conformity* to Church-Formality : For no *Property* out of the Church (the plain *English* of publick Severity for *Non-conformity*) is a Maxim that belongs not to the Holy Law of God, or Common Law of the Land.

IV. If Liberty and Property must be the *Forfeit* of Conscience for *Non-conformity* to the Prince's Religion, the Prince and his Religion shall only be Lov'd as the next best Accession to other Mens Estates, and the Prince perpetually Provok'd to expose many of his Inoffensive People to *Beggary*, for what is no Fault at Common Law.

V. It is our Superiours *Interest*, that Property be preserved, because it is their own Case: None have more *Property* than Themselves. But if *Property* be exposed for Religion, the Civil Magistrate exposes both his Conscience and Property to the *Church*, and disarms himself of all Defence upon any Alteration of Judgment. This is plainly for the *Prince* to hold under the *Prelate*, and the *State* to suffer it self to be Rid by the *Church*.

VI. It Obstructs all *Improvement* of Land and Trade; for who will Labour that hath no *Property*, or hath it exposed to an Unreasonable Sort of Men, for the bare Exercise of his Conscience to God? And a poor Country can never make a Rich and Powerful Prince. *Heaven* is therefore *Heaven*, to Good and Wise Men, because

cause they are to have an *Eternal Propriety* therein.

VII. This sort of Procedure, hitherto opposed, on the behalf of *Property*, puts the whole Nation upon miserable *Uncertainties*, that are follow'd with great *Disquiets* and *Distractions*; which certainly it is the Interest of all Governments to prevent: The Reigns of *Henry 8. Edward 6. Q. Mary* and *Q. Eliz.* both with Relation to the *Marriages* of the first, and the *Religious Revolutions* of the rest, are a plain Proof in the Case.

King *Henry* voids the Pope's *Supremacy*, and assumes it himself. Comes *Edw. 6.* and Enacts *Protestancy* with an *Oath* to maintain it. 1 *Q. Mary, Ch. 1.* This is Abrogated: *Popery* Solemnly Restored; and an *Oath* inforc'd to Defend it: And this Queen Repeals also all *Laws*.  
Her

Her Father made against the Pope, since the 12th of *Hen. 8.* Next, follows *Q. Elizabeth*, and Repeals Her Laws, calls back *Protestancy*, ordains a new Oath, to *un-Oath* Queen Mary's Oath; and all this under the Penalty of loosing *Estate, Liberty*, and sometimes *Life* it self; which, Thousands to avoid, Lamentably *Perjur'd* themselves, **four or five times over**, within the space of **Twenty** Years. In which *Sin*, the *Clergy* Transcended: **Not an Hundred for every Thousand**, but left their *Principles* for their *Parishes*. Thus hath *Conscience* been Debauch'd by *Force*, and *Property* toss'd up and down by the Impetuous Blasts of Ignorant Zeal, or Sinister Design.

VIII. Where *Liberty* and *Property* are Violated, there must always



ways be a State of *Force*: And though I pray God that we never need those Cruel Remedies, whose Calamitous Effects we have too lately felt, yet certainly, *Self-Preservation* is of all Things dearest to Men; insomuch that being not Conscious to themselves of having done an ill Thing, They, to defend their *Unforfeited* Privileges, chearfully Hazard all they have in this World: So very strangely Vindictive are the Sons of Men, in Maintenance of their *Rights*. And such are the Cares, Fears, Doubts and Insecurities of that Administration, as render Empire a *Slavery*, and Dominion the worst sort of *Bondage* to the Possessor. On the contrary, nothing can give greater Chearfulness, Confidence, Security and Honour to any *Prince*, than Ruling by Law; for it is a Conjunction of *Title* with

with *Power*, and Attracts *Love* as well as it Requires *Duty*.

Give me Leave, without Offence (for I have God's Evidence in my own Conscience, I intend nothing but a Respectful Caution to my Superiours) to Confirm this Reason, with the Judgment and Example of other Times. - The Governours of the *Eleans* held a strict Hand over the People; who, Dispairing of Relief at home, called in the *Spartans*, and by their Help Freed all their Cities from the sharp Bondage of their Natural Lords.

The State of *Sparta* was grown Powerful, and Opprest the *Thebans*; They, though but a weak People, whetted by Despair, and the Prospect of greater Miseries, did, by the *Athenians*, deliver themselves from the Spartan Yoak.

Nor is there any other considerable Reason given for the Ruin of the *Cathaginian* State, than *Avarice* and *Severity*. More of this is to be found in *Raleigh's* History of the World, l. 3. who hath this Witty Expression in the same Story, l. 5. of a Severe Conduct. "When a forced Government, saith he, shall decay in Strength, It will suffer, as did the old Lyon, for the Oppression done in his Youth; being Pinch'd by the Wolf, Goar'd by the Bull, and Kick'd also by the Ass: The Senceless Mobb.

This lost *Cesar Borgia*, his new and great Conquests in *Italy*. No better Success attended the Severe Hand held over the People of *Naples*, by *Alphonso* and *Ferdinand*. 'Twas the undue Severity of the *Sicilian* Governours, that made the *Syracusians*, *Leontines* and *Messeni-ans* so Easie a Conquest to the *Romans*.

*mans.* An harsh Answer to a Petitioning People lost *Rehoboam* Ten Tribes. On the contrary, in *Livy*, Dec. 1. l. 3. We find, that *Petilia*, a City of the *Brutians* in *Italy*, chose rather to endure all Extremity of War from *Hannibal*, than upon any Condition to Desert the *Romans*, who had Govern'd them moderately, and by that gentle Conduct procur'd their Love; even then, when the *Romans* sent them Word, *They were not able to relieve them, and wish'd them to provide for their own Safety.*

*N. Machiavel* in his Discourses upon *Livy*, p. 542. tells us, that one Act of *Humanity* was of more Force with the Conquer'd *Falisci*, than many Violent Acts of *Hostility*: Which makes good that Saying of *Seneca*, *Mitius imperanti melius paretur*, They are best obeyed, that govern most mildly..

IX. If these Ancient **Funda-**  
**damental Laws**, so Agreeable  
 with *Nature*, so Suited to the Dis-  
 positions of our *Nation*, so Often  
 Defended with *Blood and Treasure*,  
 so Carefully and Frequently Rati-  
 fied by our Ancestors, shall not  
 be, to our great Pilots, as *Stars* or  
*Compass* for them to Steer the Ves-  
 sel of this Kingdom by, or *Limits*  
 to their Legislation; no Man can  
 tell how long he shall be Secure of  
 his *Coat*, Enjoy his *House*, have  
*Bread* to give his Children, *Liber-*  
*ty* to Work for Bread, and *Life*  
 to Eat it. Truly, this is to justify  
 what we condemn in *Roman Ca-*  
*tholicks*. It is one of our main  
*Objections*, that *their Church assumes*  
*a Power of Imposing Religion*, there-  
 by denying Men the Liberty of  
 walking by the Rules of their own  
*Reason and Conscience, and Precepts*  
*of Holy Writ*: To whom, we op-  
 pose



pose both. We say, the *Church* is tyed to act nothing *contrary* to Reason; and that *Holy Writ* is the declar'd *Law* of Heaven, which to maintain, Power is given to the *True Church*. Now let us apply this *Argument* to our Civil Affairs, and it will certainly end in a reasonable *Limitation* of our *Legislators*, that they should not impose that upon our Understandings, which is *inconsistent* with them to Embrace; nor offer any the least *Violation* to Common Right. Do the Romanists say, *Believe as the Church Believes*? Do not the Protestants, and which is harder, *Legislators* say so too? Do we say to the Romanists, at this rate, *Your Obedience is Blind, and your Ignorance is the Mother of Devotion*? Is it not not also true of our selves? Do we object to them, *This makes your Religion uncertain, one Thing*

to Day, and another to Morrow?  
 Doth not our own Case submit us  
 to the like Variation in Civils?  
 Have we not long told them, that  
*under pretence of obeying the Charch,*  
*and not controuling her Power, she*  
*hath raised a Superstructure inconsis-*  
*ent with that Foundation she pretends*  
*to build upon?* And are not we the  
 Men in Civils, that make our Pri-  
 viledges rather to depend upon  
 Men, than Laws, as she doth upon  
 Councils, not Scripture? If this be  
 not *Popery* in Temporals, what  
 is?

It is humbly beseech'd of *Super-*  
*riours*, that it would please them  
 to consider what *Reflection* such  
 Severity justly brings upon Their  
 Proceedings; and remember, that  
 in their ancient *Delegations*, it was  
 not to Define, Resolve, and Im-  
 pose Matters of Religion, and *sa-*  
*crifice* Civil Priviledges for it; but,  
 to

to Maintain the Peoples *Properties*, according to the Ancient Fundamental Laws of the Land, and to add such *Statutes* only, as were *Consistent with*, and *Preservative* of those Fundamental Laws.

Lastly, To conclude this Head; My plain and honest Drift has been, to show that *Church Government* is no *Essential* Part of the old *English Government*, and to disintangle *Property* from *Opinion*, the untoward Knot, the *Clergy*, for several Ages have tyed, which is not only the Peoples *Right*, but our Superiours *Interest* to Undo; for it gauls both People and Prince. For, where *Property* is subjected to *Opinion*, the *Church* interposes, and makes something else requisite to enjoy *Property*, then belongs to the Nature of *Property*; and the *Reason* of our Possession is not our *Right* by, and *Obedience* to, the  
Common

Common Law, but *Conformity* to Church Law, or Laws for Church Conformity. A Thing dangerous to Civil Government, since 'tis an Alteration of old *English Tenure*, a suffering the *Church* to Trip up and supplant the *State*; and a making People to owe their Protection not to the *Civil*, but *Ecclesiastical* Authority. For let the *Church* be my *Friend*, and all is well; make her my *Foe*, and I am made her Prey, let *Magna Charta* say what *she* will for me: My *Horses, Cows, Sheep, Corn, Goods* go first, my *Person* to Goal next, for all That: Behold, some *Church Trophies* made at the Conquest of a peaceable *Dissenter*!

This is that anxious Thing; May our *Superiours* please to weigh it in the Equal Scale of *Doing as they would be done by*; Let those Common Laws, that *Fix* and *Preserve Property*, be the Rule  
and

and Standard of their Legislation and Administration. Make *English* Mens Rights as Inviolable, as *English* Church Rights Disintangle and Distinguish them: And let no Men sustain Civil Punishments for *Ecclesiastical* Faults, but for Sins against the ancient, establish'd *Civil* Government only; that the Natures of Acts and Rewards may not be *Confounded*. So shall the *Civil* Magistrate Preserve Law, secure his Civil Dignity and Empire, and make Himself Belov'd of *English* Men; whose Cry is, and the Cry of whose Laws hath ever been, **Property rather than Opinion, Civil Rights not concern'd with Ecclesiastical Discipline, nor forfeitable for Religious Non-conformity.**

But tho' an Inviolable Preservation of *English* Rights, of all things, best secureth to our *Superi-*



ours, the Love and Allegiance of the People; yet there is something further, that, with Submission, I offer to their serious Consideration, which in the *second* place concerns their *Interest*, and the *Peoples Felicity*; and that is their *Disagreement* about *Religion*, notwithstanding their unanimous Cry for *Property*; a prudent Mannagement of which, may turn to the great Quiet, Honour and Profit of the King and Kingdom.

## II. Our

II. Our Superiours governing themselves upon a **BALANCE**, as near as may be, towards the several Religious Interests.

**T**O Perform my Part, in this Point, being the second Branch of my Answer to the Question; I shall not, at this time, make it my Business to manifest the *Inconsistency* that there is between the *Christian Religion*, and a *forced Uniformity*, not only because it hath been so often and excellently done by Men of Wit, Learning and Conscience, and that I have else-where largely deliver'd my sense about it; but because Every free *and* impartial Temper, hath,

hath, of a long time, observ'd, that such *Barbarous Attempts* were so far from being Indulg'd, that they were most severely Prohibited by Christ himself; who instructed his Disciples, *to Love their Enemies*, and not to *Persecute* their Friends for every Difference in *Opinion*: That the *Tares* should grow with the *Wheat*: That *his Kingdom is not of this World*: That *Faith is the Gift of God*: That the *Will and Understanding of Man* are *Faculties* not to be work'd upon by any *Corporal Penalties*: That *TRUTH is All-sufficient to her own Relief*: That *ERROR and ANGER* go together: That *Bale Coyne* only stands in need of *Imposition* to make it current, but that *True Metal* passeth for its own *Intrinsick Value*; with a great deal more of that Nature. I shall therefore chuse to oppose my self,

at this time, to any such Severity, upon meer *Prudence*; that such as have *No Religion* (and certainly they that Persecute for *Religion*, have as little as need to be) may be induc'd to *Tolerate* Them that have.

*First*, However Advisable it may be, in the Judgment of some *Worldly Wise Men*, to prevent, even by Force, the arising of any *New Opinion*, where a Kingdom is Universally of another Mind; especially if it be Odious to the People, and Inconsistent with the Safety of the Government; it cannot be so, where a Kingdom is of *Many Minds*, unless some One Party hath all the *Wisdom, Wealth, Number, Sober Life, Industry* and *Resolution* of its side; which I am sure is not to be found in *England*. So that the Wind hath plainly shifted its Corner,

ner, and consequently obliges to another Course: I mean, *England's* Circumstances are greatly changed, and they require *new Expedients* and another sort of *Application*.

Physicians vary their Medicines according to the Revolution and the Mixture of Distempers. They that seek to tye the Government to obsolete and inadequate Methods (supposing them once apt, which Cruelty in this Case never was) are not Friends to its Interest, whatever they may be to their own. If our *Superiours* should make it their Business so to Prefer *One Party*, as to Depress or Deprive the Rest, they insecure themselves, by making their Friends their Enemies, who, before were one anothers. To be sure it createth *Hatred* between the Party advanced, and those depressed. *Jacob's*

F 2

pre-



preferring *Joseph*, put his Brethren upon that Conspiracy against him.

I will allow that they may have a more particular Favour for the Church Party than for any other Perswasion, but not more than for all other Parties in *England*: That certainly would break the *Ballance*; the keeping up of which, will make every Party to owe its Tranquility to their Prudence and Goodness, which will never fail of Returns of Love and Loyalty. For since we see each Interest looks jealously upon the other, 'tis reasonable to believe, they had rather the Domination should lodge where it is, while Impartial in their Judgment, than to trust it with any one sort of themselves.

Many Inquisitive Men into Humane Affairs have thought, that the Concord of Discords hath not been the infirmer Basis Govern-  
ment

ment can rise or stand upon: It hath been observed, that less Sedition and Disturbance attended *Hannibal's* Army, that consisted of many Nations, than the *Roman* Legions, that were of one People. It is Marvelous, how the Wisdom of that General secured them to his Designs: *Livy* saith, "That  
 "his Army for Thirteen Years,  
 "that had roaved up and down  
 "the *Roman* Empire, made up of  
 "many Countries, divers Languages, Laws, Customs, Religions; under all their Successes  
 "of War and Peace, *never Mutinied.* *Malvetzy*, as well as *Livy*, Ascribes it to that Variety, well managed by the General.

By the like Prudence *Jovianus* and *Theodosius Magnus* brought Tranquillity to their Empire, after much Rage and Blood for Religion.

In Nature we also see, all Heat consumes, all Cold kills ; that Three Degrees of Cold to Two of Heat, allay the Heat, but introduce the Contrary Quality, and over-cool by a Degree ; but two Degrees of Cold, to two of Heat, make a *Poyze* in Elements, and a *Ballance* in Nature.

The like in Families : It is not probable that a Master should have his Work so well done, at least with that Love and Respect, who continually *Smiles* upon one Servant, and severely *Frowns* upon all the rest ; on the contrary, 'tis apt to raise feuds amongst Servants, and turn Duty into Revenge, at least Contempt. *In Fine* ; It is to make our *Superiours* Dominion less than God made it, and to blind their Eyes, stop their Ears, and shut up their Breasts, from beholding the Miseries, hearing the  
Cries,

Cries, and redressing the Grievances of a vast number of People, under their Charge, vex'd, in this World, for their *Belief* and Inoffensive Practice about the next.

*Secondly*, It is the Interest of Governours to be put upon no Thankless Offices; that is, to blow no Coals in their own Country, especially when it is to consume their People, and, it may be, themselves too: Not to be the *Cat's Foot*, nor to make Work for themselves, or fill their own Hands with Trouble, or the Kingdom with Complaints. It is to forbid them the Use of *Clemency*, wherein they ought most of all to imitate God Almighty, *whose Mercy is above all his Works*; and renders them a sort of *Extortioners* to the People, the most remote from the End and Goodness of their Office.

In short, It is the best Receipt that their Enemies can give, to make them Uneasie to the Country.

*Thirdly*, It not only makes them Enemies, but there is no such Excitement to Revenge, as a *Rap'd* Conscience. He that hath been forc'd to break his Peace, to gratifie the Humor of another, must have a great share of Mercy and Self-denial to Forgive that Injury, and forbid himself the Pleasure of Retribution upon the Authors of it: For Revenge, in other Cases condemnab!e of all, is here look'd upon by too many to be the next way to Expiation. To be sure, whether the Grounds of their Dissent be rational in themselves, such Severity is unjustifiable with them; for this is a *Maxim* with Sufferers, Whoever is in the Wrong, *the Persecutor*



*secutor cannot be in the Right.* Men, not conscious to themselves of Evil, and harshly Treated, not only resent it unkindly, but are Bold to shew it.

*Fourthly,* Suppose the Prince, by his Severity, conquers any into a Compliance, he can upon no Prudent Gound assure himself of their Fidelity, whom he hath taught to be Treacherous to their own Convictions. Wise Men rarely confide in those whom they have debauch'd from Trust to serve themselves: At best it resembleth but forc'd Marriages, that seldom prove happy to the Parties. In short, Force makes *Hypocrites*, 'tis *Perswasion* only that makes Converts.

*Fifthly,* This Partiality, of Sacrificing the Liberty and Property

of all Dissenters, to the Promotion of a single Party, be they Good or Ill Men, as it is the lively Representation of *J. C's Horrendum Decretum*; so the Consequences of the one belong unto the other; it being but that Ill-natured Principle put into *Practice*. Men are put upon the same desperate Courses, either to have no Conscience at all, or to be Hang'd for having a Conscience not Fashionable: For, let them be *Virtuous*, let them be *Vitious*, if they fall not in with *That Mode* of Religion, they must be *Reprobated* to all Civil and Ecclesiastical Intents and Purposes. Strange! that Men must either deny their Faith and Reason, or be destroyed for acting according to them, be they otherwise never so Peaceable. What Power is this, or rather what Principle? But that Men are to be protected

protected upon Favour, not Right or Merit; and that no Merit out of the Publick Church - Dress should find Acceptance, is severe. That Father we justly blame, that narrows his Paternal Love to some one of his Children, though the rest be not one jot less Virtuous than the Favorite: Such Injustice can never flow from a Soul acted by Reason, but a Mind govern'd by Fancy, and enslaved to Passions.

*Sixthly*, consider **Peace, Plenty and Safety**, the three great Inducements to any Country to *Honour* the Prince, and *Love* the Government, as well as the best Allurements to *Foreigners* to Trade with it, and Transport themselves to it, are utterly lost by such Partialities: For instead of Peace, Love and Good Neighbourhood, Behold

*Anima-*

*Animosity and Contest !* One Neighbour watcheth another, and makes him an Offender for his Conscience ; this divides them, their Families and Acquaintance : Perhaps, with them, the Towns and Villages where they Live : And most commonly, the *Sufferer* hath the *Pitty*, and the *Persecutor* the *Odi-um* of the Multitude. And truly when People see Cruelty Practised upon their Inoffensive Neighbours, by a Troublesome sort of Men, and those Countenanced by a Law, it breedeth Ill *Blood* against the Government. Certainly, *Halling People to Goals, Breaking open their Houses, Seizing of their Estates*, and that without all Proportion ; leaving Wives without their Husbands, and Children without their Parents, and their Families, Relations, Friends and Neighbours under Amaze and Trouble, is almost

as

as far from the Peace of a well-govern'd Kingdom, as it is from the Meekness of *Christianity*.

**Plenty** will be hereby exchanged for **Poverty**, by the Destruction of many *Thousand* Families within this Realm, who are greatly Instrumental for the carrying on of the most *Substantial Commerce* therein: Men of *Virtue*, *Good Contrivance*, *Great Industry*; whose Labours, not only keep the Parishes from the *Trouble and Charge* of Maintaining them and theirs, but help to Maintain the *Poor*, and are great *Contributors* to the *King's Revenue* by their Traffick. This very Severity will make more *Bankrupts* in the Kingdom of *England* in Seven Years, than have been in it upon all other Accounts in Seven Ages: Which *Consequence*, how far it may consist with the Credit and Interest of  
the



the Government, I leave to better Judgments.

This Sort of great Severity that hath been lately, and still is used amongst us, is like to prove a great Check to that Readiness, which otherwise we find in Forreigners to trade with the Inhabitants of this Kingdom; for if Men cannot call any Thing their *Own*, under a different Exercise of Conscience from the National Way of Religion, their Correspondents may Justly and Prudently say, *We will not further concern our selves with Men that stand upon such ticklish Terms: What know we but such Persons are ruin'd in their Estates by Reason of their Non-Conformity, before such Time as we shall be reimburs't for Money paid, or Goods deliver'd: Nay, we know not how soon those who are Conformists may be Non-Conformists, or what Revolutions*

lutions of Councils may happen, since the Fundamental Laws, so jealous of the People's Property, are so little valued by some of their own Magistrates; for though we are told of very worthy and excellent Laws in England for the Security of the Peoples Rights, yet we are also told, that they all hang at the Church's Girdle, insomuch as no Church-Conformity no Property; which is, No Church-Man, No English-Man. So that in Effect the Rights of their Country depend upon the Rights of their Church; and those Churches have taken their Turns so often, that a Body knows not how to manage one's self securely to one's own Affairs, in a Correspondence with any of them: For in King Henry the eight's Days Popery was the only Orthodox Religion, and Zuinglius, Luther, Melanchton, Oecolampadius, &c. were great Hereticks: In Edward the sixth's Time, they  
were

were Saints, and Popery was Idolatry: A few Years after Q. Mary makes the Papists Holy Church, and Protestantcy Heresie: About six Years compleats her Time, and Q. Elizabeth enters her Reign, in which Protestants are good Christians, and the Church of Rome the Whore of Babylon. In her Reign, and that of King James, and King Charles the first, sprung the Puritans, who divided themselves into Presbyterians and Independents: The Bishops exclaimed against them for Schismatics, and they against the Bishops for Papistical and Anti-christian. In the long Parliament's Time the Presbyterian drives out the Bishop; O. Cromwell defeating them, and sending the Presbyterian to keep Company with the Bishop, confers it mostly upon the Independent and Anabaptist, who kept it through the other Fractions of Government, till the  
Presbyter

Presbyter and Bishop got it from them: And the Bishop now from the Presbyter; but how long it will rest there, who knows? Thus a Forreigner may justly argue.

Nor is my Supposition idle or improbable, unless Moderation take Place of Severity, and Property the room of Punishment for Opinion; for that must be the lasting Security, as well as that it is the *Fundamental Right* of English People.

There is also a further Consideration, and that is, the rendering just and very good Debts Desperate, both at Home and Abroad, by giving Opportunity to the Debtors of Dissenters to detain their Dues. Indeed it seems a natural Consequence with all but Men of Mercy and Integrity: *What should we pay them for, may they say, that are not in a Capacity*  
to

*to demand or receive it, at least to compel us? Nay they may plead a sort of Kindness to their Creditors, and say, We had as good keep it, for if we pay it them, they will soon loose it; 'tis better to remain with us, than that they should be pillag'd of it by informers; though Want should in the mean time overtake the right Owners and their Families.*

Nor is it unworthy of the most deliberate Thoughts of our Superiours, that *the Land already swarms with Beggars*, and that there is hardly so ready a Course to encrease their Number, as the severe Prosecution of Dissenters, both by making them such, and those that their Employes have kept from Begging all this while: So that though they immediately Suffer, the Kingdom, in the End, must be the Loser. For besides a decay of Trade, &c. this driving



driving away of *Flocks of Sheep*, and *Herds of Cattel*, seizing of *Barns full of Corn*, breaking open of *Doors and Chests*, taking away the *best Goods* that those Instruments of Cruelty can find, sometimes *All*, even, to a *Bed*, a *Blanket*, wearing *Apparel*, and the very *Tools of Trade*, by which People honestly labour to get their Bread, till they leave Men, Women and Children *destitute* of Subsistence, will necessitate an extream Advance of the *Poors Rate* in every Parish of England, or they must be *Starv'd*. Oh that it would please them that are in *Authority* to put a Stop to this *Inhumane Usage*, lest the *Vengeance* of the Just God break forth further against this Poor Land !

**Safety**, another Requisite to an happy Government, must needs be at an End, where the Course oppugn'd is followed, By Tempt-  
ing

ting People to Irregular Methods to be easy, or to *Quit* the Land. And truly it is but some Prudent Prince's Proclaiming Liberty of Conscience within his Territories, and a Door is opened for a Million of People to pass out of their Native Soil, which is not so extremely Improved, that it should not want Two or Three Hundred Thousand Families more than it hath, to advance it; especially at this Time of Day, when our Foreign Islands Yearly take off so many Inhabitants from us, who, from necessity, are made unable to stay at home: And as of Contraries there is the same Reason, so let the Government of *England* but give that Prudent Invitation to Foreigners, and She maketh Her self Mistress of the Arts and Manufactures of *Europe*. Nothing else hath hindred *Holland* from  
 Truckling

Truckling under the *Spanish* Y oak,  
and being Ruin'd above Three-  
score Years ago, and given Her that  
Rise to Wealth and Glory.

*Seventhly*, Nor is this Severity  
only Injurious to the Affairs of  
*England*, but the whole *Protestant*  
World: For besides that it calls  
the Sincerity of their Proceedings  
against the *Papists* into Question,  
It furnisheth Them with this sort  
of Unanswerable Interrogatory:  
*The Protestants exclaim against us  
for Persecutors, and are they now the  
very Men Themselves? Was Seve-  
rity an Instance of Weakness in our  
Religion, and is it become a valid  
Argument in theirs? Are not our  
Actions ( once void of all Excuse  
with them ) now Defended by their  
Own Practice? But if Men must be  
restrained upon Prudential Considera-  
tions from the Exercise of their Con-  
sciences*

*sciences in England, why not the same in France and Germany, where Matters of State may Equally be Pleaded ? Certainly whatever Shifts Protestants may use to Palliate these Proceedings, they are thus far Condemnable upon the Foot of Prudence.*

*Eighthly, Such Procedure is a great Reflection upon the Justice of the Government, in that It Enacts Penalties inadequate to the Fault committed, viz. That I should loose my Liberty and Property, Fundamental Civil Priviledges, for some Error in Judgment about Matters of Religion : As if I must not be a Man, because I am not such a sort of Religious Man as the Government would have me; but must loose my Claim to all Natural Benefits, though I agree with them in Civil Affairs, because*

I

I fall not in with the Judgment of the Government in some Points of a Supernatural Import, *though no real Part of the Ancient Government*. Perhaps instead of going to the Left Hand, I go to the Right: And whereas I am commanded to hear *A. B.* I rather chuse to hear *C. D.* my Reason for it, being the more Religious Influence the latter hath over me, than the former; and that I find by Experience, *I am better Affected, and more Religiously Edified to Good Living*. What *Blemish* is this to the Government? What *Insecurity* to the Civil Magistrate? Why may not this Man Sell, Buy, Plow, Pay his Rents, be as good a Subject, and as true an English Man, as any *Canformist* in the Kingdom? Howbeit, *Fines* and *Goals* are very ill Arguments to Convince Sober Mens Understandings, and dis-  
swade



fwade them from the Continuance of so harmless a Practice.

*Lastly*, But there is yet another Inconveniency that will attend this Sort of Severity, that so naturally follows upon our Superiors making *Conformity* to the Doctrine and Worship of the *Church of England*, the *Sine Qua Non*, or Inlet to all Property, and Ground of Claim to all *English* Civil Priviledges, to wit, *That they make a Rod, for ought they know, to Whip their own Posterity with*; since it is Impossible for them to secure their Children to the *English* Church: And if it happen that any of them are never so *Conscientiously* of another Perswasion, they are lyable to all the Miseries that may attend the Execution of those Laws. Such a *King* must not be King, such *Lords* and *Commons* must not sit in Parliament:

Nay,

Nay, they must not Administer any Office, be it never so Inferiour within the Realm, and they never so Virtuous and Capable to do it: Their very *Patrimony* becomes a Prey to a Pack of Lewd *Informers*, and their Persons exposed to the Abuse of Men, Poor or Malicious.

But there are Three *Objections* that some make against what I have urged, not unfit to be Consider'd. The First is this: *If the Liberty desired be granted, what know we but Dissenters may employ their Meetings to Insinuate against the Government, Inflame People into a Dislik of their Superiours, and thereby prepare them for Mischief?*

*Answ.* This *Objection* may have some Force, so long as our Superiours continue Severity; because it doth not only *Sharpen* and *Excite*

Dissenters, but it runs many of them into such Holes and Corners, that if they were disposed to any such *Conspiracies*, they have the Securest Places and Opportunities to effect their Design. But what *Dissenter* can be so destitute of Reason and of Love to Common Safety, as to expose himself and Family, by *Plotting* against a Government that is *Kind to them*, and *Gives him the Liberty he desires*, and that he could only be supposed, in Common Sense, to Plot for.

To be sure, Liberty to Worship God, according to their several Professions, will be, as the Peoples *Satisfaction*, so the Governments greatest *Security*: For if Men enjoy their *Property* and their *Conscience*, which is the Noblest Part of it, without Molestation, what should they Object against or Plot

Plot for? Mad Men only Burn their own Houses, Kill their own Children, and Murder themselves. Doth *Kindness* or *Cruelty* most take with Men that are Themselves? *H. Grotius*, with *Campanella*, well observ'd, that a *fierce and rugged Hand* was very *Improper* for Northern Countries. English-men are gain'd with *Mildness*, but inflamed by *Severity*: And many that do not Suffer, are as apt to Compassionate them that do. And if it will please our *Superiours* to make Tryal of such an *Indulgence*, doubtless they will find *Peace* and *Plenty* to ensue. The Practice of other Nations, and the Trade, Tranquillity, Power and Opulency that have attended It, is a Demonstration in the Case, and ought not to be Slighted by them that Aim at as High and Honourable Things for their Country. And if we

had no other Instance than our own *Intervals or Connivance*, they were enough to satisfy reasonable Men, how much more *Moderation* Contributes to Publick Good, than the Prosecution of People for their Religious Dissent; since the One hath ever produced *Trade and Tranquillity*; the Other, greater *Poverty and Dissension*.

The Second *Objection*, and by far the more weighty, runs thus:

Object. *The King and Parliament are Sworn to Maintain and Protect the Church of England, as Establish'd, &c. therefore to Tolerate other Opinions is against their Oath.*

Ans<sup>r</sup>. Were the Consequence True, as it is not, it were highly unreasonable to expect *Impossibilities* at their Hands. Kings and Parliaments can no more make *Brick without Straw*, than Captives: They



They have not Sworn to do things beyond their Ability; If they have, their Oaths are *void*. Had it been in His and Their Time and Choice, when the *Church of England* had been first disturbed with Dissenting Opinions, it might have reflected more Colourably a kind of Neglect upon them: But since the *Church of England* was no sooner a Church, then She found some sort of *Dissenters*, and that the utmost Policy and Severity of *Q. Elizabeth*, King *James*, and King *Charles the First*, were not *Successful* towards an absolute Uniformity; Why should it reflect upon them, that the *Church of England* hath not yet rid Her self of Dissenting Parties? Besides, it is Notorious, that the late Wars gave that Opportunity to Differing Perswasions to spread, that it was utterly impossible for Them to hinder,

der, much less during the several Years of the King's Exile; at what time the present Parliament was no Parliament, nor the generality of the Members of it scarce of any Authority.

Let it be Considered, that 'twas the Study of the Age to make People *Anti-Papistical* and *Anti-Episcopal*, and that Power and Preferment went on that side. Their Circumstances therefore, and their Ancestors, are not the same: They found the Kingdom Divided into several Interests, and it seems a Difficulty Insuperable to Reduce them to any Perswasion; wherefore to render themselves Masters of their Affections, they must necessarily govern themselves towards them on a *Ballance*, as is before exprest; otherwise, they are put upon the greatest Hazards, and extreamest Difficulties to themselves

selves and the Kingdom, and all to perform the Uncharitable Office of Suppressing many Thousands of Inoffensive Inhabitants, for the different Exercise of their Consciences to God : It is not to make them Resemble Almighty God, the Goodness of whose Nature extends it self Universally, thus to narrow his Bowels, and confine his Clemency to one single Party of Men : It ought to be Remembred, that *Optimus* went before *Maximus* of Old, and that Power without Goodness is a Frightful Sort of a Thing.

But *Secondly*, I deny the Consequence, viz. *That the King is therefore Oblieged to Persecute Dissenters, because He or the Parliament hath taken an Oath to Maintain the Church of England* : For it cannot be supposed or intended, that by Maintaining Her, they are to De-

*stroy the Rest of the Inhabitants: Is it Impossible to Protect Her without knocking all the rest on the Head? Do they allow any to Supplant Her Clergy, Invade Her Livings, Possess Her Emoluments, Exercise Her Authority? What would She have? Is She not Church of England still, Invested with the same Power, Bearing the same Character? What Grandeur or Interest hath She lost by Them? Are They not manifestly Her Protector? Is She not National Church still? And can any of Her Children be so Insensible, as either to challenge her Superiours with Want of Integrity, because they had not performed Impossibilities? Or to excite them to that Harshness, which is not only Destructive of many Thousands of Inhabitants, but altogether Injurious to their own Interest, and dishonourable to a Protestant Church? Suppose*  
 Dissenters

Dissenters not to be of the visible Church, are they therefore unfit to live? Did the *Jews* treat Strangers so severely that had so much more to say then her self? Is not the *King Lord of Wasts and Commons as well as Inclosures*? Suppose God hath elected some to *Salvation*, doth it therefore follow he hath Reprobated all the rest? And because he was God of the *Jews*, was he not therefore God of the *Gentiles*? Or were not the *Gentiles* his People, because the *Jews* were his peculiar People?

To be brief, They have answered their Obligation and consented to *Severe Laws*, and commanded their *Execution*, and have not only preferr'd her above *Every Interest in England*, but against them, to render her more *Powerful and Uuiversal*; till they have good Reason to be *Tired* with the



Lamentable Consequennces of those Endeavours, and conclude, that the *Uniformity* thereby intended, is a thing Impracticable, as well as Mischievous.

And I wonder that These Men should so easily forget that great Saying of King CHARLES the 1<sup>st</sup> ( whom they pretended so often and with so much Honour to Remember ) in his Advice to the present King : where he saith,

*Beware, of Exasperating any Factions, by the Crossness and Asperity of some Mens Passions, Humors, or Private Opinions, imployed by You, groundd only upon*

upon their Differences  
 in Lesser Matters, which  
 are but the Skirts and  
 Suburbs of Religion,  
 wherein a Charitable  
 Connivance and Chri-  
 stian Toleration often  
 Dissipates their Strength,  
 whom Rougher Opposi-  
 tion Fortifieth, and  
 puts the Despised and  
 Oppressed Party into such  
 Combinations as may  
 most Enable them to get  
 a Full Revenge upon  
 Those

Those they count their Persecutors ; who are commonly Assisted with that Vulger Commiseration, which attends all that are said to Suffer under the Common Notion of Religion.

So that we have not only the King's Circumstances, but his Father's Council, upon Experience, who yet saw not the End of one half of them, defending a Charitable Connivance, and *Christian* Toleration of Dissenters.

Obj. 3. But it may be further alledged, *This makes way for Popery or Presbytery, to undermine the*

*the Church of England, and mount the Chair of Preferment, which is more than a Prudential Indulgence of Different Opinions.*

And yet there is not any so probable an expedient to vanish those Fears, and prevent any such Design, as keeping all Interests upon the Ballance; for so the *Protestant* makes at least six Parties against *Popery*, and the *Church of England* at least five against *Presbytery*: And how either of them should be able to turn the Scale against five or six, as free and thriving Interests as either of them can pretend to be, I confess I cannot understand. But if one only Interest must be Tolerated, which implies a Resolution to suppress the Rest, plain it is, that the *Church of England* ventures her single Party against six growing Interests, and thereby gives *Presbytery* and *Popery*

*Popery* by far an easier Access to Supremacy; especially the latter, for that it is the Religion of those Parts of *Europe*, which neither want Inclination, nor Ability to Prosper it. So that besides the Consistency of such an Indulgence with the Nature of a *Christian-Church*, there can be nothing more in Prudence advisable for the *Church of England*, then to allow of the *Ballance* propounded: In that *first*, no Person of any real Worth will ever the sooner decline her; on the contrary, it will give her a greater Reputation in a Country so hating Severity: And next, it gives her Opportunity to turn the Scale against any one Party that may aspire to her Pulpits and Indowments: And she never need to fear the Agreement of all of them to any such Design; *Episcopacy* being not more intolerable then



then *Presbytery* in Power, even to an *Independency* it self; and yet between them, lies the narrowest Difference that is among the Dissenting Interests in this Kingdom.

But this seems too large, and yielding; and therefore to find a *Medium*, something that may compass the happy End of good Correspondence and Tranquillity, at least so to fortifie the *Church of England*, as that she may securely give Law to all other Religious Interests, I hear a *Comprehension* is pitch'd upon, and diligently pursued by both *Episcopaleans* and *Presbyterians*, at least, Some of each Party.

But if it becomes wise Men to Look before they Leap: It will not be unadvisable for them to weigh the *Consequences* of such an Endeavour.

Endeavour. For, in the first place, there is no People I know in *England*, that stands at a greater Distance from her Doctrine, as it is maintain'd by her present Sons, then the *Presbyterians*, particularly about *absolute Reprobation*, the *Person of Christ*, *Satisfaction* and *Justification*: And he must be a Stranger in the *Religious Contests* of our times that knows not this.

II. In the next place, None have govern'd themselves with a plainer Denial and more peremptory Contempt of *Episcopacy*, and the whole Discipline and Worship of the *Church of England*, than the *Presbyterians* have ever done: Let them put me to prove it, if they please, even of their *most Reverend Fathers*.

III. Who knows not that their *Reciprocal Heats* about these very things, went a great way towards  
our

our late lamentable Civil Wars? Now if the same *Principles* remain with each Party, and that they are so far from repenting of their *Tenaciousness*, that on the contrary they justify their Dissent from one another in these matters, how can either Party have *Faith* enough to rely upon each other's Kindness, or so much as attempt a *Comprehension*? What must become of the Labours of Bp. *Witgift*, R. *Hooker*, Bp. *Banckroft*, Bp. *Lawd*, &c. in Rebuke of the *Presbyterian Separation*; and the Names of those leading Dissenters, as *Cartwright*, *Dode*, *Bradshaw*, *Rutherford*, *Galaspee*, &c. so Famous among the present *Presbyterians*, and that for their *Opposition* to the *Church*? This consider'd, what Reason can any render, why the *Episcopalians* should so singularly Provide for, and Confide in an *Interest*

*terest* that hath already been so *Destructive* to theirs? On the other hand, With what Prudence may the *Presbyterians* imbrace the others *Offer*, that to be sure, intend it not in stark Kindness to them, and who they must needs think, cannot but owe Revenge, and retain deep Grudges for old Stories?

But IV. The very Reason given for a *Comprehension* is the greatest that can be urged against it, namely, *The Suppression of other dissenting Perswasions*. I will suppose a *Comprehension* and the Consequences of it, to be an *Eradication of all other Interests*, the Thing desired: But if the two remaining Parties shall fall out, as it is not likely that they will long agree, what can the *Presbyterian* have to Ballance himself against the Ruling Power of *Episcopacy*?  
Or

Or the *Episcopalian* to secure himself against the Aspirings of *Presbytery*? They must either All become *Episcopalians*, or *Presbyterians*, else they will mix like *Iron* and *Clay*, which made ill *Leggs* for the *Image* in *Daniel*: Nor is it to be thought, that their *Leggs* should stand any better upon a *Comprehension*.

But some are ready to say, that *Their Difference is very minute*. Grant it; Are they ever the more deserving for that? Certainly, *Forbearance* should carry some Proportion with the Greatness of the Difference, by how much it is easier to comply in Small than Great Matters. He that dissents *Fundamentally*, is more excusable than those that Sacrifice the *Peace* and *Concord* of a Society about *Little Circumstances*; for there cannot  
be



be the same Inducement to suspect Men of *Obstinacy* in an *Essential* as *Circumstantial Non-Conformity*.

Besides, How far can this Accommodation extend with Security to the Church of *England*? Or, on what better Terms will the *Presbyterians* Conform to her Discipline and formal Acts of Devotion, than those upon which *Peter du Moulin* offer'd to Preach the Gospel at *Rome*? viz. *That if the Pope would give him Leave to Preach at Rome, he would be contented to Preach in a Fool's Coat*. I question if the *Presbyterian* can go so far, I am sure he could not; and as sure, that *Peter du Moulin* hop'd by Preaching there in a *Fool's Coat*, to Inculcate that Doctrine which should *Un-Mitre* the *Pope*, and alter his *Church*; the very Thing the *Church of England* Fears

Fears -and Fences against. For *Peter du Moulin* intended to Preach in a *Fool's Coat* no longer, than till he had Preach'd the People Wise enough to throw it off again. So the *Presbyterians*, they may Conform to certain *Ceremonies* (once as *Sinful* to them, as a *Fool's Coat* could be *Ridiculous* to *Peter du Moulin*) that they may the better introduce their Alterations both in *Doctrine* and *Discipline*.

But that which ought to go a great Way with our Superiours, in their Judgment of this Matter, is not only the Benefit of a *Ballance* against the Presumption of any one Party, and the Probability, if not Certainty of their never being Overdriven by any one Perswasion, whilst they have others that will more than Poiz against the growing Power of it: But the Conceit

Conceit it self, if not altogether Impracticable, is at least very difficult to the Promoters, and an Office as Thankless from the Parties concern'd.

This appears in the Endeavours used for a *Comprehension* of *Arrians* and *Homousians* under one *Orthodoxy*, related not only in our common *Ecclesiastical History*, but more amply in the Writings of *Hilary*, an Enemy to the *Arrians*, and *Mariana's Spanish History*. Their publick Tests, or comprehensive Creeds were many, *Nice*, *Ariminum* *Sirminum*, &c. in order to agree both Parties, that neither might stigmatize the other with the Odious Crime of *Heresie*: But the Consequence of all this Convocation and Prolix Debate was, that neither Party could be satisfied, each continuing their former Sentiments, and so grew up into stronger

stronger Fractions, to the Divi-  
 sion, Distraction, and almost De-  
 struction of the whole Empire:  
 Recover'd a little by the Prudent  
 Moderation of *Jovianus*, and much  
 Improved, not by a Comprehen-  
 sion, but Restauration of a Season-  
 able *Liberty of Conscience* by *Theo-*  
*dosius Magnus*.

Also in *Germany*, about the  
 Time of the Reformation, nothing  
 seemed more sincere than the De-  
 sign of Union between the *Luthe-*  
*rians* and *Zuinglians*: For *Luther*  
 and *Zuinglius* themselves, by the  
 earnest Endeavours of the *Land-*  
*grave* of *Hessen*, came together;  
 but the Success was so small, not-  
 withstanding the *Grave's* Media-  
 tion, that they parted scarcely  
 Civil: To be sure, as far from U-  
 nity as Controversie is.

*Luther* and *Cardinal Cajetan* met  
 for a Composure of the Breach be-  
 twixt -

twixt the *Protestants* and the *Pope*, but it was too wide for those Conferences to reconcile: No *Comprehension* could be Practicable. A second Essay to the same Purpose, was by *Melanchton*, *Cassander* and others; the Consequence of it was, that the Parties were Displeased, and the Heads *Suspected*, if not Hated of their Followers. Nor had *Bucer's* Meeting with *Julius Pflugg* any better Success.

And how fruitless their Endeavours have been, that with greatest Art and Industry, have, of a long, Time endeavoured a Reconciliation of *Lutherans* and *Calvinists*, is well known to Those that are acquainted with the Affairs of *Germany*: And Such as are not, may furnish themselves from the publick Relations given by those that are employed about that Accommodation: Where, besides a  
Dull



Dull and Heavy Progress, the Reader may be a Witness of their Complaint; not only that both Parties are too Tenacious, but that The *Mediators* suffer Detraction for their good Endeavours; each Side grudging every Title they yield; and murmuring as if they were to loose their Religion. And if Persons so disinterested, and worthy in their Attempts, have had no better Issue, I cannot see how those who seem compell'd by Worldly Interest more than Conscience, to seek and propagate a *Comprehension*, especially, when it determines in the Persecution of the rejected Perswasions, can, with any Reason, expect, from God or Good Men any better Success.

*Lastly*, there is nothing any Man, touch'd with Justice and Mercy, can alledge for a Com-  
H pre-

*prehension*, that may not much better be urged for a *Toleration*: For the Church is less in Danger, when she knows the worst, than where the Danger is Hid. Five Enemies without Doors being not so Mischevous as one within. But they are also Men, and *English* Men as well as those of other Perswasions: Their Faith is as *Christian*, They believe as Sincerely, live as Conscientiously, are as Useful in the Kingdom, and Mannage their Dissent with as much Modesty and Prudence, the Church of *England* her self being in great Measure Judge, as Those, on whose Account a *Comprehension* may be Desired: To be sure they are *English* Men, and have an Equal Claim to the Civil Rights of their Native Country, with any that live in it; whom to persecute, whilst others, and those no better

ter Men in themselves are more than Tolerated, is, as I have already said, *The Unreasonable and Unmerciful Doctrine of Absolute Reprobation put in Practice in Civils*: From which the Lord Deliver us.

### III. A Sincere Promotion of General and **PRACTICAL** Religion.

**I** am now come to the last, which, to be sure, is not the least Part of my Answer to the Question propounded, *viz.* The *Sincere Promotion of General and Practical Religion*; by which I mean the **Ten Commandments, or Moral Law, and Christ's Sermon upon the Mount**, with other Heavenly Sayings, excell-

ently improved, and earnestly recommended by several Passages in the Writings of his Disciples, which forbid *Evil*, not only in *Deed*, but *Thought*; and injoyn *Purity* and *Holiness*, as *without which no Man*, be his Pretences what they will, *shall ever see God*. In short, General, True and Requisite Religion, in the Apostle James's Definition is, *To visit the Widow and the Fatherless, and to keep our selves, through the Universal Grace, unspotted of the World*. This is, the most Easie and Probable Way to Fetch in all Men professing God and Religion: Since every Perswasion acknowledges this in Words, be their Lives never so disagreeable to their Confession. And this being the *Unum necessarium*, that one thing Needful, to make Men happy here and hereafter, why, Alas, should Men  
sacrifice

sacrifice their Accord in this great Point, for an Unity in minute or circumstantial Things, that perhaps is inobtainable, and if it were not, would signifie little or nothing, either to the Good of Human Society, or the particular Comfort of any, in the World which is to come?

No one Thing is more Unaccountable and Condemnable among Men, than their Uncharitable Contests about Religion, indeed about Words and Phrases; whilst they all verbally met in the most, if not only necessary Part of *Christian* Religion: For nothing is more certain, than if Men would but live up to one Half of what they Know in their own Consciences They Ought to Practise, Their Edge would be taken Off, Their Blood would be Sweetned by Mercy and Truth, and this Un-



natural Sharpness qualified. They would quickly find Work enough at home, each Man's Hands would be full by the Unruliness of his own Passions, and in Subjecting of his own Will, and instead of Devouring one another's *Good Name, Liberty, or Estate, Compassion* would rise, and mutual Desires to be Assistent to Each Other in a *Better Sort of Living*. Oh how Decent, and how Delightful would it be, to see Mankind ( the Creation of One God, that hath upheld them to this Day ) of *One Accord*, at least in the Weighty Things of God's *Holy Law*!

'Tis Want of *Practice*, and too much *Prate*, that hath made Way for all the *Incharity* and *Ill living* that is in the World. No Matter what Men *say*, if the Devil keep the House. Let the *Grace of God*, the *Principle of Divine Life*

**Life** ( as a great Man lately call'd it in his Speech ) but be *Heartily* and *Reverently* Entertained of Men, that *Teaches us to deny Ungodlineß, and converse Soberly, Righteously and Godlily in this present evil World,* and it is not to be doubted but *Tranquility*, at least a very *Amicable Correspondence* will follow.

Men are not to be reputed *Good* by their *Opinions* or *Profession* of Religion: Nor is it that which ought to Engage the Government, but *Practice*; 'tis this that must *save or damn*. Christ in his Representation of the Great Day, doth not tell us that it shall be said to Men, *Well Said*, or *Well Talked*, but **well Done Good and Faithful Servant**: neither is the, **Depart from me**, directed to any but the *Workers of Iniquity*. *Error* now is Translated from the

Signification of an *Evil Life* to an *Unsound Proposition*, as *Philosophy* is from *Mortification*, and *Well-living* to an *Unintelligible Way of Wrangling*. And a Man is more bitterly harrass'd for a *Mistaken Notion*, though the Party holding it thinks not so, and the Party charging it denies an *Infallible Judgment* ( so that it may as well be true as false for all them ) than for the *Most Dissolute* or *Immorall Life*. And truly it is High Time, that Men should give Better Testimony of their *Christianity*: For *Cruelty* hath no Share in *Christ's Religion*, and *Coercion* upon *Conscience* is utterly inconsistent with the very Nature of his Kingdom. He rebuked that Zeal which would have *Fire come down from Heaven to devour Dissenters*, tho' it came from his own Disciples; and forbad them to pluck up the  
*Tares,*

*Tares*, though none had a more Gentle or Infalible Hand to do it with.

He preferr'd *Mercy* before *Sacrifice*, and therefore we may well believe that the Unmerciful Sacrifices some Men now offer, I mean, *Imprisoning Persons, spoiling of Goods, and leaving whole Families destitute of Subsistence*, as well as disinheriting them of all Civil Priviledges in the Government; Are far from being Grateful to him, Who therefore came into the VWorld, and Preach'd that Heavenly Doctrine of *Forbearing, and Loving of Enemies*, and laid down his most *Innocent* Life for us, whilst we were Rebels, that by such Peaceable Precepts, and so Patient an Example, the VWorld might be Prevailed upon to Leave those Barbarous Courses. And doubtless, very la-

mentable will their Condition be; who at the coming of the great Lord, shall be found **Beaters of Their fellow Servants.**

In vain do Men go to Church, Pray, Preach, and stile themselves Believers, Christians, Children of God, &c. whilst such Acts of Severity are Cherish'd among them; and any Disposition to molest harmless Neighbours for their Conscience, so much as Countenanc'd by them. A Course quite Repugnant to Christ's Example and Command. In short, the promoting of this General Religion by a severe Reprehension and Punishment of Vice, and Encouragement of Virtue, is the Interest of our Superiours, several V Vays.

1. In that it Meets with, and Takes in all the Religious Perswasions of the Kingdom, for all pretend to make this their Corner-Stone,



*Stone.* Let them be equally Encouraged to Square their Building by it. *Penal Laws for Religion, is a Church with a Sting in her Tail*; take that out, and there is no Fear of the Peoples Love and Duty: And what better Obligation or Security can the Civil Magistrate desire? Every Man Owns the *Text*; 'tis the *Comment* that's Disputed. Let it but please him to make the **Text Only Sacred and Necessary**, and leave Men to Keep Company with their Own Meanings or Consequences, and He does not only Prudently take in All, but Suppresseth nice Searches, Fixes Unity upon Materials, Quits present Differences about Things of lesser Moment, Retrives Humanity and *Christian Clemency*, and Fills the Kingdom with Love and Respect to their Superiours.

2. *Next*, A Promotion of General Religion, which, being in it self Practical, Brings Back Ancient *Virtue*. Good Living will Thrive in this Soil: Men will grow *Honest*, *Trusty* and *Temperate*; we may expect Good Neighbourhood and Cordial Friendship: One may then depend more upon a *Word*, than now upon an *Oath*. How lamentable is it to see People afraid of one another; Men made and provided for of one God, and that must be judged by that one Eternal God, yet full of Diffidence in what each other says, and most commonly interpret, as People read *Hebrew*, All Things Backward.

3. The *Third* Benefit is, that Men will be more Industrious, more Diligent in their lawful Callings, which will Encrease our Manufacture, Set the Idle and Poor

Poor to work for their Livelyhood, and Enable the several Countries, with more Ease and Decency to Maintain the Aged and Impotent among them. Nor will this only help to make the *Lazy* conscientiously Industrious, but the Industrious and Conscientious Man *Cheerful* at his Labour, when he is assured to keep what he *Works* for, and that the Sweat of his Brows shall not be made a *Forfeit* for his Conscience.

4. It will render the Magistrates Province more facil, and Government a *Safe* as well as *Easie* Thing. For, as *Tacitus* says of *Agricola's* instructing the *Brittains* in Arts and Sciences, and using them with more Humanity than other Governours had done, that it made them Fitter for Government; So if Practical Religion, and the Laws made to maintain it,

it, were Duly Regarded, the very Natures of Men, now VVild and Froward, by a Prejudiced Education and Croſs and Jealous Interests, would learn *Moderation*, and see it to be their greatest Interest to pursue a Sober and Amicable Conversation; which would Ease the Magistrate of much of his present Trouble, and Encrease the Number of Men fit to Govern; of which the Parliament Times are an Undeniable Instance. And the Truth is, 'tis a piece of Slavery to have the Regiment of Ignorants and Ruffians; but there is true Glory in having the Government of Men, Instructed in the Justice and Prudence of their own Laws and Country.

*Lastly*, It is out of this *Nursery* of Virtue, Men should be drawn to be Planted in the Government, not what is their Opinion, but what

what is their Manners and Capacity? Here the Field is large, and the Magistrate has room to choose Good Officers for the Publick Good. Heaven will Prosper so Natural, so Noble, and so Christian an *Essay*; which ought not to be the least Consideration with a good Magistrate; and the Rather, because the Neglect of this Practical Religion, hath been the Ruin of Kingdoms and Common Wealths, among *Heathens, Jews and Christians*. This laid *Tarquin* Low, and his Race never Rose more. How puissant was *Lacedamon* and *Athens* in Greece, till *Luxury* had Eaten out their *Severity*, and a Pompous Living, contrary to their Excellent Laws, render'd their Execution Intollerable? And was not *Hannibal's* Army a Prey to their *Own* Idleness and Pleasure, which by *Effeminating* their Na-  
tures,



tures, Conquer'd them, when the Whole Power of *Rome* could not do it? What Else Betrayed *Rome* to *Cesar's* Ambition, and made way for the after Rents and Divisions of the *Empire*, The Merit as well as Conquest and Inheritance of a Well Govern'd People for several Ages, as long as their Manners lasted? The *Jews* likewise were Prosperous, while they kept the Statutes and Judgments of their God; but when They became Rebellious and Dissolute, the Almighty, either Visited Them from Heaven, or exposed them to the Fury of their Neighbours. Nothing else sent *Zeaekiah* to *Babylon*, and gave him and the people a Victim to *Nebuchadnezzar* and his Army.

*Neglect of Laws, and Dissolute Living, Andrew Horn* (that lived in the Time of *Edw. the First*, as before —

before cited) tells us, was the *Cause of the Miserable Thralldom and Desolation the Britains sustained by Invaders and Conquerors.* And pray, what else hath been the English of our *Sweeping Pestilence, Dreadful Fires, and Outragious Factions* of late Years? Hundreds of Examples might be brought in this Case; but their Frequency shall Excuse me.

Thus have I Honestly and Plainly Cleared my Conscience for my Country, and Answer'd, I hope, Modestly, and though Briefly, yet Fully, the Import of the *Question* Propounded, with *Honour* to the Magistrate, and Safety to the People, by an happy Conjunction of their Interests. I shall Conclude,

*That as Greater Honour and Wisdom cannot well be Attributed to any*  
Sort

Sort of Men, than for our Superiours, under their Circumstances, to be Sought to by all Perswasions, Considered in by all Perswasions, and Obey'd by all Perswasions; and to make those Perswasions know, that it is Their Interest so to do, as well as that it is the Interest of our Superiours, They should, and to which the Expedients proposed naturally tend; So, for a further Inducement to Embrace it, let them be constantly remembred, that the Interest of our English Governours is like to stand longer upon the Leggs of the English People, than of the English Church: Since the One takes in the Strength of All Interests, and the Other leaves out All but her Own: And it may happen that the English Church may Fail, or go Travel again, but it is not probable that the English People should do Either; especially while Property is

Pre-

*Preserved, a Ballance Kept, General  
Religion Propagated, and the World  
Continues.*

May all this prebail with  
our Superiours, to make the best  
use of their little Time; Re-  
membzing, in the midst of all  
their Power and Grandeur, that  
They Carry Mortality about  
them, and are Equally liable  
to the Scrutiny and Judg-  
ment of the Last Day, with the  
Poorest Peasant; and that they  
have a great Stewardship to Ac-  
count for: So that Moderation  
and Vertue being their Course,  
They, for the future, shall steer;  
after having faithfully Dis-  
charg'd that Great Trust Re-  
posed in Them, by God and  
his Free People, They may,  
with Comfort to their Souls,  
and

**'and Honour to their Name  
and Actions, Safely Anchor in  
the Haven of Eternal Blessed  
ness.**



# A Corollary.

**T**Hat the *People* are under a great *Dissatisfaction*. That the Way to *Quiet Differences*, and render contrary *Interests Subservient* to the Interest of the Government, is,

First, To Maintain Inviolably the Rights of it, viz. Liberty and Property, Legislation and Juries, without Neglect. That, Slighting and Infringing them hath been the Injury of Prince and People, and early or late the Ruin of the Contrivers of so ill Designs; and when all has been done, the only Expedient has been, to come back again to English Law.

This

*This takes in all, pleases all, because it Secures and Profits all. Sacrificing Priviledges for the sake of Conformity, makes a Breach upon the Civil Government, Alienates the Peoples Affections from their Prince, Lodges Property in the Church, so as None can come at it, but through Obedience to her Rites, for she at this Rate has the keeping of it; a Thing Unknown, as well as Unsafe to the Ancient English Government.*

*2dly, That the Prince Govern himself upon a Ballance towards all Religious Interests: That this best Poizes Parties to his Security, Renders him Master of an Universal Affection, and Makes him truly and safely Prince of all his Country: But the contrary Course Narrows his Justice and Mercy, makes the Government to Shine but upon one*  
Part

Part of the Kingdom; to be Just but to One Party, and Disinherit the rest from their Birth-right: That this Course ends in great Disadvantage to the Peace, Plenty and Safety of Prince and People.

3dly, And lastly, Instead of being Uncharitable, Severe and Cruel for Modifications, let the Debate about them Sleep, and General and Practical Religion be Promoted; that which receives an Amen in every Man's Conscience, from the Principle of Divine Life in every Breast: That all agree in the most Weighty Doctrines; and that nothing will sooner Sweeten Mens Blood, and Mollifie their Natures, than employing the Time and Pains they bestow on fruitless Contests, in Living up to what they both Know, Believe and Accord in: That this leaves Men to keep Company with  
their

*their own Comments, and makes the Text Only Sacred, and Holy Living Necessary, not only to Heaven, but Earthly Places, I mean, Preferments: Whence Vertue becomes the Door to Favour, and Conscience (now smothered in the Croud of Sinister Interests) the Noble Rule of Living.*

*God Almighty, if it please him, beget Noble Resolutions in the Hearts of our Superiours, to use these Plain and Safe Expedients, that Charity may supplant Cruelty, Con-  
fess yield to Good Life, and present Distances Meet in a Just and Kind Neighbourhood.*

*Great and Honourable is that Prince, and Free and Happy that People, where these Things take place.*

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